Supreme Court, U.S.
FILED

No. 95 1195 JAN 23 1996

OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1995

JONI WHITMORE and JAMES QUINLAN,

Petitioners,

v.

THE FEDERAL ELECTION COMMISSION, DON YOUNG, TONY SMITH, ALASKANS FOR DON YOUNG, and TONY SMITH FOR CONGRESS,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Donald Craig Mitchell
1335 F Street
Anchorage, Alaska 99501
(907) 276-1681

Attorney for Petitioners

137 pp

QUESTION PRESENTED

Whether Congress intended the Federal Election Campaign Act, as amended, to assert the jurisdiction of Congress over, and to otherwise authorize, the making of campaign contributions to the principal campaign committee of a candidate for election to the United States House of Representatives by persons (who make their contributions either individually or through a political action committee) who do not reside in the congressional district in which the candidate seeks election.

TABLE OF CONTENTS

Page

Opinions Below 2

Jurisdiction 2

Statute Involved 3

Statement of the Case 3

Reasons for Granting the Petition 15

1. The Court of Appeals Decided an Important Question of Federal Law That Has Not Been, But Should Be, Settled By This Court 15

2. The Methodology the Court of Appeals Employed to Discern the Intent of Congress Embodied in FECA So Far Departs From the Accepted and Usual Course of Judicial Proceedings as to Call for the Exercise of the Court's Supervisory Power 19

3. The Court of Appeals' Pronouncement That the Petitioners' Claims Are Frivolous So Far Departs From the Accepted and Usual Course of Judicial Proceedings as to Call for the Exercise of the Court's Supervisory Power 25

Conclusion 30

TABLE OF AUTHORITIES

Cases Page

Asgrow Seed Co. v. Winterboer,
115 S.Ct. 788 (1995) 23

Babbitt v. Sweet Home Ch. of
Commun. for Greater Or.,
115 S.Ct. 2407 (1995) 22

Buckley v. Valeo,
424 U.S. 1 (1976) 5, 6

Burdick v. Takushi,
504 U.S. 428 (1992) 4

Chevron USA, Inc. v. NRDC,
467 U.S. 837 (1984) 20

FEC v. NRA Political Victory Fund,
115 S.Ct. 537 (1994) 22

Field v. Mans,
116 S.Ct. 437 (1995) 23

Griffin v. Oceanic Contractors, Inc.,
458 U.S. 564 (1982) 21

Hughes v. Rowe, 449 U.S. 5 (1980) 13

Keisling v. VanNatta, United States
Court of Appeals for the Ninth
Circuit No. 95-35999 26

King v. St. Vincent's Hospital,
502 U.S. 215 (1991) 21

Lujan v. Defenders of Wildlife,
504 U.S. 555 (1992) 13

TABLE OF AUTHORITIES - Continued

Page

McNary v. Haitian Refugee Center,
498 U.S. 479 (1991) 20

Miller v. VanNatta, United States
Court of Appeals for the Ninth
Circuit No. 95-35998 26

Mitchell v. State of Alaska,
Petition for Certiorari No. 88-1830 27

New York Times v. Sullivan,
376 U.S. 254 (1964) 5

N.L.R.B. v. Town & Country
Elec., Inc., 116 S.Ct. 450 (1995) 22

United Public Workers of America
(C.I.O.) v. Mitchell,
330 U.S. 75 (1947) 25

United States v. Heirs of Boisdore,
8 How. 113 (1849) 21

Wesberry v. Sanders,
376 U.S. 1 (1964) 3

Constitution

U.S. CONST. art. I, sec. 4, cl. 1 5

U.S. CONST. art. III 13, 25, 28

First Amendment 10, 16-17

Fifth Amendment 10, 16-17

TABLE OF AUTHORITIES - Continued

Page

Statutes

2 U.S.C. 437h 2, 12

2 U.S.C. 439a 18

2 U.S.C. 441a(a)(1) 18

2 U.S.C. 441b 5

2 U.S.C. 441c 6

2 U.S.C. 441e 6

2 U.S.C. 441f 18

2 U.S.C. 441g 18

5 U.S.C. 7323(b)(1) 6

18 U.S.C. 603 6

28 U.S.C. 1254(1) 3

28 U.S.C. 1331 2

42 U.S.C. 1983 2

Federal Election Campaign Act,
Pub. L. No. 92-225, 86 Stat.
3 (1972)(codified as amended
at 2 U.S.C. 431 et seq.) 3, 6

Pub. L. No. 93-443,
88 Stat. 1263 (1974) 6

TABLE OF AUTHORITIES - Continued

Congressional Materials Page

H.R. 2503, 102d Cong., 1st Sess. (May 30, 1991) 29

S. 1219, 104th Cong., 1st Sess. (Sept. 7, 1995) 29

S. Rep. No. 689, 93d Cong., 2d Sess. (1974) 24

139 Cong. Rec. H676 (daily ed. Feb. 17, 1993) 8

139 Cong. Rec. H10,661 (daily ed. Nov. 22, 1993) 7

139 Cong. Rec. H10,672 (daily ed. Nov. 21, 1993) 8

139 Cong. Rec. H10698 (daily ed. Nov. 22, 1993) 29

140 Cong. Rec. S 13758 (daily ed. September 30, 1994) 9

Miscellaneous

Nicholson, Campaign Financing and Equal Protection, 26 Stan. L. Rev. 815 (1974) 16

Public Papers of the Presidents: George Bush 1992-93 8

Raskin & Bonifaz, Equal Protection and the Wealth Primary, 11 Yale Law & Policy Rev. 273 (1993) 16-17

TABLE OF AUTHORITIES - Continued

Page

Raskin & Bonifaz, The Constitutional Imperative and Practical Superiority of Democratically Financed Elections, 94 Colum. L. Rev. 1160 (1994) 17

No.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1995

JONI WHITMORE and JAMES QUINLAN,

Petitioners,

v.

THE FEDERAL ELECTION COMMISSION, DON YOUNG, TONY SMITH, ALASKANS FOR DON YOUNG, and TONY SMITH FOR CONGRESS,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioners Joni Whitmore and James Quinlan pray that a writ of certiorari issue to review the opinion of the United States Court of Appeals for the Ninth Circuit, entered in the above-entitled proceeding on October 26, 1995.

OPINIONS BELOW

The opinion of the Court of Appeals for the Ninth Circuit is reported at 68 F.3d 1212. The amended opinion is reprinted in the appendix at App. 1. The Order from Chambers of the United States District Court for the District of Alaska is not reported. The Order is reprinted in the appendix at App. 19.

JURISDICTION

Invoking the jurisdiction of the court under 2 U.S.C. 437h, 28 U.S.C. 1331 and 42 U.S.C. 1983, petitioners Joni Whitmore and James Quinlan filed this action in the United States District Court for the District of Alaska on June 30, 1994. On December 8, 1994, the district court issued an Order from Chambers that granted the respondents' motions to dismiss, and on December 12, 1994 entered a final judgment dismissing the petitioners' complaint. On October 26, 1995 the United States Court of Appeals for the Ninth Circuit affirmed the district court's entry of its

final judgment. No petition for rehearing was sought. The jurisdiction of this Court to review the opinion of the Court of Appeals is invoked under 28 U.S.C. 1254(1).

STATUTE INVOLVED

Relevant provisions of the Federal Election Campaign Act, Pub. L. No. 92-225, 86 Stat. 3 (1972)(codified as amended at 2 U.S.C. 431 et seq.), are reprinted at App. 41.

STATEMENT OF THE CASE

This case presents a question of statutory construction of considerable public importance. As Justice Black observed in Wesberry v. Sanders, 376 U.S. 1, 17 (1964):

> No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live.

But the exercise of that right involves more than marking a ballot and having the ballot counted in an election. With respect to the selection of the resident of a congressional district who will represent the other residents

of the district in the United States House of Representatives, the right to have "a voice in the election of those who make the laws" requires the election to be conducted in a manner that affords each candidate a fair opportunity to compete for the votes of district residents.

For that reason, as the Court noted in Burdick v. Takushi, 504 U.S. 428, 433 (1992):

> Common sense, as well as constitutional law, compels the conclusion that government must play an active role in structuring elections; "as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest . . . ."

Throughout the eighteenth and most of the nineteenth centuries, the means that congressional candidates employed to communicate with voters did not cost significant amounts of money to utilize. However, as the Court in 1976 described the twentieth century change of situation:

> [V]irtually every means of communicating ideas in today's mass society requires the expenditure of money . . . The electorate's increasing dependence on television,

> radio, and other mass media for news and information has made these expensive modes of communication indispensable instruments of effective political speech.

Buckley v. Valeo, 424 U.S. 1, 19 (1976).

Since debate between congressional candidates should be "uninhibited, robust, and wide-open" - see cf. New York Times v. Sullivan, 376 U.S. 254, 270 (1964), and since the most efficacious means for candidates to communicate with voters now cost money to utilize, the more money a candidate has available to spend, the more "uninhibited, robust and wide-open" the "speech" he will be able to purchase to advocate his candidacy.

However, to ensure that election contests are fair and honest, in 1907 Congress began exercising the authority granted by art. I, sec. 4, cl. 1 of the United States Constitution to today deny congressional candidates access to money from the following entities and individuals: corporations, national banks and labor unions, 2 U.S.C. 441b, individuals who

hold government contracts, 2 U.S.C. 441c, foreign nationals, 2 U.S.C. 441e, and employees of the Federal Election Commission, 5 U.S.C. 7323(b)(1). And Congress has denied congressional candidates who are sitting members of Congress access to money contributed by individuals who are employed on their staffs. 18 U.S.C. 603.

In 1971 Congress enacted the Federal Election Campaign Act (FECA), Pub. L. No. 92-225, 86 Stat. 3 (1972), to revise its rules governing the financing of congressional elections, which it amended in 1974. Pub. L. No. 93-443, 88 Stat. 1263 (1974) (FECA codified as amended at 2 U.S.C. 431 et seq.).

Section 608(c) of FECA imposed a limit on total candidate expenditures. But in 1976 the Court invalidated section 608(c) on the ground that the restriction it imposed did not advance a compelling governmental interest. Buckley, supra at 54-58.

Since Buckley, congressional candidates

have been free to spend as many dollars to purchase campaign "speech" as individual and political action committee (PAC) contributors have been willing to contribute to their campaigns.

The consequence?

Post-Buckley, FECA's regulation of the making and expenditure of campaign contributions has unfairly unleveled the playing field on which congressional candidates compete for votes.[1] And it has allowed PAC managers and lobbyists to unduly influence congressional decisionmaking.[2]

---

[1]In the 1992 election incumbent members of the United States House of Representatives received 94.7 percent of all PAC contributions. 139 Cong. Rec. H10,661 (daily ed. Nov. 22, 1993).

[2]Representative Glenn Poshard has described the influence PACs wield over congressional decisionmaking as follows:

> In 1988, I ran for Congress with the benefit of political action committee money. Shortly upon arriving in Washington, I was faced with a number of votes where my analysis of the issues told me to vote one way, but my commitment to the PAC donors based on their issue surveys led me another way. (cont.)

For those reasons, Presidents and members of Congress repeatedly have recommended that FECA be amended. As President Bush explained his rationale for urging that FECA be amended to prohibit PAC contributions:

> In the 1990 elections, special interest political action committees, PACs, gave almost $ 117 million to incumbent Congressmen and Senators. Only about $ 15 million were donated to challengers. With this eight-to-one spending advantage, obvious voter discontent was buried in a wave of PAC-financed television advertising. And so, nearly every incumbent won. The time has come for change because when the system is broken, you do have to fix it.

1 Public Papers of the Presidents: George Bush 1992-93 478. See also 139 Cong. Rec. H676 (daily ed. Feb. 17, 1993)(President Clinton urging Congress in his first State of the Union address to enact "real campaign finance reform").

In 1994 Senate Majority Leader George

> After doing that once or twice, I returned to my office and told my staff that from this point on I would no longer accept PAC money.

139 Cong. Rec. H10,672 (daily ed. Nov. 21, 1993).

Mitchell described his view of the threat the FECA campaign finance system poses to representative democracy as follows:

> [E]very Senator knows [the FECA campaign finance] system stinks. Every Senator who participates in it knows this system stinks. And the American people are right when they mistrust this system, where what matters most in seeking public office is not integrity, not ability, not judgment, not reason, not responsibility, not experience, not intelligence, but money. We could have a candidate of the highest integrity, the highest intelligence, the most vast experience who can be overwhelmed by a tide of money by someone who has none of them. Money dominates this system. Money infuses the system. Money is the system.

140 Cong. Rec. S 13758 (daily ed. September 30, 1994).

Responding to the demands for reform, in 1992 the 102d Congress passed a bill that amended FECA to create a system for public campaign financing, which President Bush vetoed. In 1994 a filibuster prevented the 103d Congress from passing another public financing bill. In June 1995 President Clinton and Speaker of the House Gingrich agreed to

organize a bipartisan commission to recommend FECA amendments. But no commission has been established.

Throughout the post-Buckley campaign finance reform debate, the participants have voiced policy objections to the manner in which FECA unfairly unlevels the playing field on which candidates compete for votes and has corrupted congressional decisionmaking.

However, in the instant action, petitioners Joni Whitmore and James Quinlan allege that the operation of the FECA campaign finance system violates the petitioners' exercise of rights guaranteed by the First and Fifth Amendments.

In 1994, petitioner Whitmore was the candidate of the Green Party of Alaska for election to Alaska's seat in the United States House of Representatives.[3] And petitioner

---

[3]Alaska has a strong tradition of third party candidacies and independent voters. Three members of the Alaska Libertarian Party have served in the Alaska Legislature, and in (cont.)

Quinlan was a voter participant in the same election.

In the 1994 election respondent Don Young, the eleven term Republican incumbent, defeated petitioner Whitmore and respondent Tony Smith, the Democratic candidate, by garnering 56.9 percent of the vote. In doing so, respondent Young expended contributions made pursuant to FECA that totalled approximately $ 963,387, while petitioner Whitmore won 10.2 percent of the vote by expending contributions that totalled approximately $ 22,000.

All of the contributions petitioner Whitmore received were made by residents of Alaska's congressional district. But approximately $ 508,951 (52.8 percent) of the contributions respondent Young received were made by PACs and by individuals who are not residents of Alaska's congressional district.

1990 Walter Hickel, the Alaska Independence Party candidate, was elected Governor. Today, 53.4 percent of Alaska registered voters are not members of <u>any</u> political party.

Pursuant to 2 U.S.C. 437h, petitioners Whitmore and Quinlan's complaint prayed the district court to certify the following questions to the Court of Appeals for the Ninth Circuit:

> A. To the extent the Federal Election Campaign Act, as amended, authorizes candidates seeking election as Alaska's representative in the United States House of Representatives to solicit and accept campaign contributions from persons who are not residents of Alaska's at-large congressional election district, and to finance campaign-related communications with registered voters who reside in such district with monies derived from such contributions, does such Act substantially infringe upon plaintiffs Joni Whitmore and James Quinlan's exercise of their right to vote, their right to political association, and their right to be governed by a United States House of Representatives that is republican in form?
>
> B. If the answer to question no. A is yes, is the infringement upon plaintiffs' exercise of their rights to vote, to political association and to be governed by a United States House of Representatives that is republican in form justified because necessary to advance a compelling governmental interest?

But rather than doing so, the district court issued an Order from Chambers that granted the respondents' motions to dismiss the

petitioners' complaint[4] on the ground that the allegations contained therein did not demonstrate that the petitioners had standing to invoke the Article III jurisdiction of the Court of Appeals to adjudicate their claims because the allegations did not satisfy the elements of the Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992), standing test. See App. 26-39.[5]

The petitioners appealed the district court decision to the Court of Appeals, which

---

[4]The complaint is reprinted in the appendix at App. 41.

[5]In so holding, the district court made no mention of the factual allegations in the complaint that described the petitioners' injuries-in-fact - see App. 73-78, 84-85, 87-88, and which the court was required to presume to be true. Hughes v. Rowe, 449 U.S. 5, 10 (1980). The court also made no mention of affidavits former Alaska Republican Governor Jay Hammond, and William Hensley, a former Alaska Democratic House and Senate candidate, chairman of the Alaska Democratic Party and member of the Democratic National Committee filed in which each affiant offered his expert opinion that respondents Young and Smith's expenditure of campaign contributions made by nonresidents of Alaska's congressional district inflicted injuries-in-fact on the petitioners.

affirmed on the single ground that the allegations in the petitioners' complaint did not satisfy the causation element of the Lujan test because

> [FECA] neither prohibits nor authorizes out-of-state campaign contributions. The appellants' premise, that what the Act does not prohibit, it authorizes, is foreign to our libertarian tradition. The argument assumes that conduct is restricted except insofar as a statute permits it. [FECA] restricts certain campaign conduct, but authorizes nothing. Campaign conduct is unrestricted, except to the extent that the law limits it. People do not depend on Congressional "authorization," as plaintiffs assume, for their liberty to express their political preferences.
>
> Since [FECA] does not "authorize" the contributions, it cannot be the cause of plaintiffs' claimed injuries. The absence of a causal relationship between [FECA], which they challenge, and their injury, necessarily deprives both plaintiffs of standing to challenge the Act . . . We need not reach the question of whether plaintiffs could establish either of the other two [Lujan test] prerequisites for standing, because the absence of any one element required dismissal.

App. 12-13.

For the reasons below, this Court should review the Court of Appeals holding.[6]

REASONS FOR GRANTING THE PETITION

1. The Court of Appeals Decided an Important Question of Federal Law That Has Not Been, But Should Be, Settled By This Court.

Whether the FECA campaign finance rules unfairly unleveled the playing field on which petitioner Whitmore competed against respondents Young and Smith for votes is a question of national import. Because if the rules that govern the financing of elections at which the American people select the individuals "who make the laws under which, as good citizens, [they] must live" are rigged, the rigging erodes public confidence in the fairness of those laws.

---

[6]The dispute between the parties is not moot. Respondent Don Young has announced his intention to seek reelection in 1996. Petitioner Joni Whitmore is campaigning for the nomination of the Alaska Democratic Party as the party's candidate for respondent Young's seat. And petitioner James Quinlan intends to participate by voting in the 1996 Alaska congressional election.

Since Buckley, Presidents of the United States, members of Congress of both parties, and citizens such as petitioner Quinlan who participate in elections by casting ballots rather than by writing checks, have recognized that the rules are rigged, and that the rigging is inflicting systemic damage on the American people's confidence in their government.

In their complaint, petitioners Whitmore and Quinlan allege that the FECA campaign finance rules unfairly unleveled the playing field on which petitioner Whitmore and respondents Young and Smith competed for votes to the point of unduly infringing upon the petitioners' exercise of rights guaranteed by the First and Fifth Amendments.

Knowledgeable commentators hold the same view. See e.g., Nicholson, Campaign Financing and Equal Protection, 26 Stan. L. Rev. 815 (1974). And see more recently, Raskin & Bonifaz, Equal Protection and the Wealth

Primary, 11 Yale Law & Policy Rev. 273 (1993); Raskin & Bonifaz, The Constitutional Imperative and Practical Superiority of Democratically Financed Elections, 94 Colum. L. Rev. 1160 (1994).

The validity of petitioners Whitmore and Quinlan and professors Nicholson and Raskin's assertion that the FECA campaign finance system violates the petitioners' exercise of First and Fifth amendment rights is not now at issue.

What is at issue is the validity of the Court of Appeals holding that Congress did not intend FECA to assert jurisdiction over the making by nonresidents of Alaska's congressional district of campaign contributions (either individually or through a PAC) to respondents Young and Smith.

During the 1994 election, David Rockefeller, a resident of a New York congressional district, contributed $ 1,000 to respondent Smith. Congress, acting through FECA, prohibited Mr. Rockefeller from

contributing more than $ 1,000 to respondent Smith, 2 U.S.C. 441a(a)(1), and prohibited Mr. Rockefeller from contributing his $ 1,000 to respondent Smith in cash, 2 U.S.C. 441g, or in the name of another, 2 U.S.C. 441f, and prohibited respondent Smith from spending Mr. Rockefeller's $ 1,000 except for purposes Congress has approved, 2 U.S.C. 439a.

Nevertheless, the Court of Appeals concluded that Mr. Rockefeller writing his $ 1,000 check to respondent Smith and respondent Smith spending Mr. Rockefeller's money to advance his candidacy were the private transactions of private parties over which Congress did not intend FECA to assert its jurisdiction.

Because the Court of Appeals decided a question of federal law of first impression, and because the answer to the question has important consequences for the ability of the federal judiciary to ensure that the rules that govern the financing of congressional elections

do not unlawfully infringe upon the exercise by candidates and voters of rights guaranteed by the United States Constitution, this Court should review the Court of Appeals holding.

2. The Methodology the Court of Appeals Employed to Discern the Intent of Congress Embodied in FECA So Far Departs From the Accepted and Usual Course of Judicial Proceedings as to Call for the Exercise of the Court's Supervisory Power.

An increasing percentage of the case load of the federal courts involves the adjudication of claims that raise questions regarding the intent of Congress embodied in federal statutes. During its October 1993 term, this Court issued opinions in fourteen such cases. During its October 1994 term, the Court issued opinions in seventeen such cases.

For that reason, the lower federal courts will benefit from clear guidance regarding the methodology they should employ to discern the intent of Congress embodied in its enactments. And Congress can benefit from the same guidance since

> It is presumable that Congress legislates with knowledge of [the Court's] basic rules of statutory construction . . . .

McNary v. Haitian Refugee Center, 498 U.S. 479, 496 (1991).

In Chevron USA, Inc. v. NRDC, 467 U.S. 837 (1984), the Court gave clear guidance regarding the methodology the lower courts should employ to discern the intent of Congress embodied in an ambiguous text that the agency responsible for a statute's implementation has interpreted through a considered and reasoned process. But the Court has not given consistent guidance regarding the methodology the lower courts should employ to discern whether a text is ambiguous and to discern the intent of Congress embodied in a text that the agency responsible for a statute's implementation has not interpreted through a considered and reasoned process. Review of the Court of Appeals holding in the case at bar presents an opportunity for the Court to provide additional guidance.

In United States v. Heirs of Boisdore, 8 How. 113, 121 (1849), Chief Justice Taney long ago observed that:

> In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and its object and policy.

Consistent with that admonition, in King v. St. Vincent's Hospital, 502 U.S. 215, 221 (1991), the Court reiterated the "cardinal rule" that

> a statute is to be read as a whole, since the meaning of statutory language, plain or not, depends on context.

The reason that meaning depends on context is that even a seemingly unambiguous text may not accurately communicate Congress's intent. As the Chief Justice noted in Griffin v. Oceanic Contractors, Inc., 458 U.S. 564, 571 (1982):

> in rare cases the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters, and those intentions must be controlling.

But if context should be evaluated, what are the elements of the methodology the lower

courts should employ to do so? And in what order should those elements be employed?

In Babbitt v. Sweet Home Ch. of Commun. for Greater Or., 115 S.Ct. 2407 (1995), the Court adjudicated the intent of Congress embodied in the word "harm" in the Endangered Species Act by looking to "the text and structure of the Act, its legislative history," id. at 2412, and the "broad purpose" Congress enacted the Act to achieve, id. at 2413. In FEC v. NRA Political Victory Fund, 115 S.Ct. 537 (1994), the Court evaluated the statutory context and considered the history of the Conference Committee's writing of the 1974 FECA amendments to conclude that Congress did not intend the word "appeal" to have its ordinary dictionary meaning. In N.L.R.B. v. Town & Country Elec., Inc., 116 S.Ct. 450 (1995), the Court adjudicated the intent of Congress embodied in the word "employee" in the National Labor Relations Act by looking to the "broad language of the Act itself," id. at 453, and

considering the "Act's purposes" by evaluating the "congressional reports and floor statements" that were written and made during the Act's enactment, id. at 454. And in Field v. Mans, 116 S.Ct. 437, 447 n. 13 (1995), the Court adjudicated the intent of Congress embodied in the text of the bankruptcy statute by relying on an explanation of Congress's intent contained in the report of the committee that reported the bill that became the statute.

However, in Asgrow Seed Co. v. Winterboer, 115 S.Ct. 788 (1995), a majority of the Court adjudicated the intent of Congress embodied in the word "marketing" in the Plant Variety Protection Act without looking to the intent of Congress embodied in the statute as a whole, without evaluating the context in which Congress used the word "marketing," and without considering the statute's legislative history.

So what are the elements of the methodology the lower courts should employ to discern the intent of Congress embodied in its

enactments? What can be said with certainty is that in the case at bar the Court of Appeals did not employ any of the recognized elements. As a reading of its opinion demonstrates, the Court of Appeals pronounced its judgment without considering the purposes Congress enacted FECA to achieve, without reading the statute as a whole, without reviewing the text and structure of the Act, without analyzing FECA in the context of the eighty-eight year history of Congress's assertion of jurisdiction over the making of campaign contributions, and without considering the legislative history of FECA, and particularly the report in which the Senate Committee on Rules and Administration stated that the 1974 FECA amendments assert "complete control over" all contributions to congressional candidates. See S. Rep No. 689, 93d Cong., 2d Sess. 1 (1974).

The methodology the Court of Appeals employed to discern the intent of Congress embodied in FECA so far departed from the

accepted and usual course of judicial proceedings that this Court's review of the Court of Appeals holding can provide the lower courts important guidance regarding the methodology the courts should employ to discern the intent of Congress embodied in federal statutes.

3. The Court of Appeals' Pronouncement That the Petitioners' Claims Are Frivolous So Far Departs From the Accepted and Usual Course of Judicial Proceedings as to Call for the Exercise of the Court's Supervisory Power.

Article III of the United States Constitution denies the federal courts jurisdiction to render advisory opinions. United Public Workers of America (C.I.O.) v. Mitchell, 330 U.S. 75, 89 (1947). But in the case at bar, after concluding it had no jurisdiction to adjudicate the petitioners' claims, the Court of Appeals did just that by pronouncing the claims frivolous. App. 15-18.

The Court of Appeals' gratuitous pronouncement significantly prejudices

litigants who are not parties to this action, particularly the State of Oregon and Gordon Miller, the sponsor of Oregon Ballot Measure No. 6, which the people of Oregon passed in 1994 to prohibit Oregon state and local election candidates from spending money contributed to their campaigns by PACs and other entities and by individuals who are not residents of the candidates' election districts.

The State of Oregon and Mr. Miller presently are litigating the constitutionality of Measure No. 6. Miller v. VanNatta and Keisling v. VanNatta, United States Court of Appeals for the Ninth Circuit Nos. 95-35998 and 35999.

Citing the prejudice the advisory portion of its opinion inflicts on the State of Oregon and Mr. Miller, the petitioners moved the Court of Appeals to withdraw that portion of its opinion. In so moving, the petitioners pointed out that contrary to the Court of Appeals'

observation that the petitioners "have, of course, found no precedent in any judicial decision for their novel propositions," if the court had afforded the petitioners an opportunity to be heard on the merits of their claims the petitioners would have informed the court that in 1987 Alaska Judge Joan Katz, a respected state jurist (who on information and belief is known to Judge Kleinfeld, the author of the Court of Appeals opinion),[7] ruled that allegations similar to those asserted in the instant action stated a valid claim when asserted against Alaska's campaign finance statute, which is modeled on FECA.[8]

The Court of Appeals denied the petitioners' motion to withdraw the advisory portion of its opinion. But in doing so, the

---

[7]Prior to his appointment to the Court of Appeals Judge Kleinfeld was a member of the United States District Court for the District of Alaska.

[8]Judge Katz's opinions are reprinted in Mitchell v. State of Alaska, Petition for Certiorari No. 88-1830, App. 2-28.

court amended its opinion in several subtle respects. App. 5. Rather than announcing that the petitioners have "no precedent" for their claims, the opinion now states that the petitioners have "no published precedent." App. 15. And rather than announcing the certain view that prohibiting nonresidents of Alaska's congressional district from making contributions to candidates seeking election within the district "would plainly violate the rights of the out-of-state contributors," the opinion now states that such a prohibition "may violate the rights of the out-of-state contributors." App. 17.

The Court of Appeals' equivocation regarding a constitutional question of first impression and considerable public importance demonstrates the soundness of the constraint Article III imposes on the jurisdiction of federal courts to issue advisory opinions. Of co-equal importance, the Court of Appeals' advisory pronouncement has inappropriately

intruded a federal court into the midst of the national campaign finance reform debate.[9]

For that reason, the Court of Appeals opinion so far departs from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power.

---

[9]Notwithstanding the Court of Appeals' low opinion of the merits of the petitioners' claims that the United States Constitution requires candidates to obtain their contributions from residents of their congressional districts, an "in-district only" rule is a reform that is gaining increasing consideration. The people of Oregon's passage of Ballot Measure No. 6 has been noted. In the 102d Congress, Representative James Walsh introduced a bill to amend FECA to require candidates to obtain all of their contributions from residents of their congressional districts. H.R. 2503, 102d Cong., 1st Sess. (May 30, 1991). In the 103d Congress, 173 members of the United States House of Representatives, including respondent Young, voted to amend FECA to prohibit PAC contributions and to require candidates to obtain no less than one-half of their contributions from residents of their congressional districts. 139 Cong. Rec. H10698 (daily ed. Nov. 22, 1993). And in the 104th Congress, Senator John McCain and fourteen Republican and Democratic co-sponsors have introduced a bill that encourages Senate candidates to obtain no less than sixty percent of their contributions from residents of the states in which they seek election. S. 1219, 104th Cong., 1st Sess. (Sept. 7, 1995).

CONCLUSION

The petition for a writ of certiorari should be granted. The Court may wish to consider summary reversal of the judgment of the Court of Appeals.

Respectfully submitted.

Donald Craig Mitchell
1335 F Street
Anchorage, Alaska 99501
(907) 276-1681

Attorney for Petitioners

January 1996

APPENDIX TABLE OF CONTENTS

Page

Appendix A - Decision of the United States Court of Appeals for the Ninth Circuit, dated January 10, 1996 ..... App. 1

Appendix B - Order from Chambers of the United States District Court for the District of Alaska, dated December 8, 1994 ..... App. 19

Appendix C - Complaint, dated June 30, 1994 ..... App. 41

Appendix D - Relevant Provisions of Federal Election Campaign Act ..... App. 93

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JONI WHITMORE and JAMES QUINLAN, on Behalf of Himself and All Other Persons Similarly Situated, Plaintiffs-Appellants, v. FEDERAL ELECTION COMMISSION DON YOUNG; TONY SMITH; ALASKANS FOR DON YOUNG; TONY SMITH FOR CONGRESS, Defendants-Appellees.	No. 94-36236 D.C. No. CV-94-002289-JWS ORDER AND AMENDED OPINION AND ORDER DENYING PLAINTIFFS' MOTION

Appeal from the United States District Court
for the District of Alaska
John W. Sedwick, District Judge, Presiding

Argued and Submitted
August 8, 1995 - Anchorage, Alaska

Filed October 26, 1995

Amended January 10, 1996

Before: Cynthia Holcomb Hall, Charles Wiggins, and Andrew J. Kleinfeld, Circuit Judges.

Opinion by Judge Kleinfeld

SUMMARY

**Government Law/Elections/
Civil Litigation and Procedure**

The court of appeals affirmed a district court judgment. The court held that a third party candidate and voter lacked standing to sue to obtain a judicial prohibition against contributions from citizens of other states to a congressional campaign, and the claim was also frivolous.

Appellant Joni Whitmore ran for Congress in Alaska on the Green Party ticket. Her Republican and Democratic opponents accepted donations from non-Alaskans, but she did not. Joni Whitmore brought suit seeking declaratory and injunctive relief against appellees the Federal Election Commission and her opponents, claiming that the Federal Election Campaign Act (Act) violates her rights to free association, equal protection, and a republican form of government by "authorizing" non-Alaskan contributions to the campaign. She claimed

that out-of-state contributors give more money to Republicans and Democrats than to third parties and drown out the campaigns of third party candidates. Appellant James Quinlan, who alleged that he is an Alaskan resident and voter who has never made a campaign contribution, made substantially the same claims as Joni Whitmore.

The district court dismissed the action for lack of standing. Whitmore and Quinlan (collectively, Whitmore) appealed.

[1] Whitmore's contention that the Act "authorizes" out-of-state contributions was incorrect. The Act limits some campaign contributions, but it neither prohibits nor authorizes out-of-state campaign contributions. [2] Because the Act did not authorize the contributions, it could not be the cause of Whitmore's claimed injuries. There was no causal relationship between the Act and the injuries. Thus, there was no standing to challenge the Act.

[3] That Joni Whitmore had a stake in the congressional campaign finance laws did not imply that the law caused her injury. [4] The harms alleged derived from the acts of other citizens, not from the Act.

[5] Whitmore argued she was entitled to representation by someone not beholden to any citizen of another state. However, neither the Constitution nor the United States Code supported that political theory. [6] Although she sought an injunction prohibiting competing candidates from accepting out-of-state contributions, Whitmore did not sue the out-of-state contributors who allegedly caused her injury. In any event, an injunction would unconstitutionally abridge the people's right to contribute to the candidates of their choice. Whitmore argued that the weight of in-state opinions should be enhanced, and out-of-state opinions reduced, by managing the flow of money. [7] However, Whitmore was seeking an unprecedented limitation on protected freedom

of political expression. Whitmore's claim was frivolous.

COUNSEL

Donald Craig Mitchell, Anchorage, Alaska, for the plaintiffs-appellants.

Vivien Clair (On the Briefs) and Richard B. Bader (Argued), Federal Election Commission, Washington, D.C., for the defendants-appellees.

ORDER

The opinion filed October 26, 1995, is amended as follows:

Slip op. p. 13952, 7th line from bottom, from "no precedent" to "no published precedent";

Slip op. p. 13953, line 22, change "from would plainly violate" to "may violate";

Slip op. 13954, line 2, at the end of the opinion, add "No statute or precedent supports plaintiffs' claims."

Appellants' motion filed November 9, 1995, "Requesting the Court to Withdraw Section II(C)

of its Decision" is hereby DENIED.

OPINION

KLEINFELD, Circuit Judge:

A third party candidate and a voter sued to obtain a judicial prohibition against contributions from citizens of other states to a congressional campaign. The complaint was properly dismissed for lack of standing. The claim is frivolous as well.

I. FACTS

Plaintiff Whitmore ran for Congress on a third party ticket, the Green Party, in 1994. She submitted evidence showing that she appeared at numerous locations, got press coverage, spent $ 22,000 on her campaign, and won 10.2% of the vote. She says that the Republican incumbent, Don Young, and his Democratic challenger, Tony Smith, each accepted donations from non-Alaskans, but she "refused and returned all contributions that [were] made to [her] and her committee by

persons who are not residents of the district." The complaint alleges that the Federal Election Campaign Act, 2 U.S.C. section 431 et seq. (the "Act"), "authorizes a person who is not a resident of Alaska's at-large congressional election district to make a contribution . . . to a candidate seeking election as Alaska's representative in the United States House of Representatives . . . ." She claims that, by authorizing non-Alaskan contributions to Alaska congressional candidates, the Act violates her constitutional rights to free association, equal protection, and a republican form of government.

Plaintiff Quinlan alleges that he is an Alaskan resident and voter who has never made a campaign contribution, and plans none. He makes substantially the same claims as Whitmore.

The claim of injury is basically that out-of-state money helps the Republican and

Democratic candidates drown out the campaign of a third party candidate such as Ms. Whitmore. Plaintiffs presented evidence that out-of-state contributors give more money to Democrats and Republicans than to third party candidates. One might speculate that third parties would have some supporters in several states, but majorities in few or none, so would benefit from out-of-state contributions more than Democrats and Republicans, but this factual possibility does not matter to the outcome of this case.

The plaintiffs brought the lawsuit as a class action on behalf of all Alaska voters. No class was certified, and the appeal does not raise any question regarding class certification.

Plaintiffs requested that the district court certify the case to an en banc panel of the Ninth Circuit, pursuant to the dictates of 2 U.S.C. section 437h. The district court

declined to certify the case and instead, granted the defendants' motions to dismiss the complaint for lack of standing. Plaintiffs now appeal the determination that they lack standing to bring this suit. They challenge the district court's denial of certification on appeal.

II. ANALYSIS

We review standing de novo. Douglas County v. Babbitt, 48 F.3d 1495, 1499 (9th Cir. 1995).

A. Jurisdiction

We must first resolve whether the district court had jurisdiction to render a judgment, and whether we do. The Act says "[t]he district court immediately shall certify all questions of constitutionality of this Act to the United States court of appeals for the circuit involved, which shall hear the matter sitting en banc." 2 U.S.C. section 437h. On its face, the complaint purports to challenge the constitutionality of the Act. The district

court did not certify the case, and we are not sitting en banc.

Failure to certify was not error, and we need not hear the matter en banc. No such certification should be made if the plaintiff lacks standing or the case is frivolous. The Supreme Court explained that "concerns about potential abuse of section 437h are circumscribed by the constitutional limitations on jurisdiction of federal court." California Medical Association v. Federal Election Commission, 453 U.S. 182, 193 n. 14 (1981). "A party seeking to invoke section 437h must have standing to raise the constitutional claim." Id.; Goland v. United States, 903 F.2d 1247, 1253 (9th Cir. 1990). "[W]e do not construe section 437h to require certification of constitutional claims that are frivolous." California Medical Association, 453 U.S. at 193 n. 14; Goland v. United States, 903 F.2d at 1257.

The district court had jurisdiction to dismiss the case for lack of standing instead of certifying it. We have jurisdiction to review the district court's determination that plaintiffs lack standing to bring this suit. Alternatively and independently, we have jurisdiction to review the district court's determination that frivolousness obviated any need to certify.

B. Standing

[1] The appellants' proposition that the Act "authorizes" out-of-state contributions is incorrect. The Federal Election Campaign Act limits some but not all campaign contributions:

> The statutes at issue summarized in broad terms, contain the following provisions: (a) individual political contributions are limited to $ 1,000 to any single candidate per election, with an overall annual limitation of $ 25,000 by any contributor; independent expenditures by individuals and groups 'relative to a clearly identified candidate' are limited to $ 1,000 a year; campaign spending by candidates for various federal offices and spending for national conventions by political parties are subject to prescribed limits; (b) contributions and expenditures above certain threshold levels must be reported and publicly disclosed; (c)

> a system for public funding of Presidential campaigns is established by Subtitle H of the Internal Revenue Code; and (d) a Federal Election Commission is established to administer and enforce the legislation.

Buckley v. Valeo, 424 U.S. 1, 7 (1976). The Act neither prohibits nor authorizes out-of-state campaign contributions. The appellants' premise, that what the Act does not prohibit, it authorizes, is foreign to our libertarian tradition. The argument assumes that conduct is restricted except insofar as a statute permits it. The Act restricts certain campaign conduct, but authorizes nothing. Campaign conduct is unrestricted, except to the extent that the law limits it. People do not depend on Congressional "authorization," as plaintiffs assume, for their liberty to express their political preferences.

[2] Since the Act does not "authorize" the contributions, it cannot be the cause of plaintiffs' claimed injuries. The absence of a causal relationship between the Act, which they challenge, and their injury, necessarily

deprives both plaintiffs of standing to challenge the Act.

Standing requires a "causal connection between the injury and the conduct complained of":

> [T]he irreducible constitutional minimum of standing contains three elements: First, the plaintiff must have suffered an 'injury in fact' - an invasion of a legally protected interest which is (a) concrete and particularized, and (b) 'actual or imminent, not conjectural or hypothetical.' Second, there must be a causal connection between the injury and the conduct complained of - the injury has to be 'fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court.' Third, it must be 'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.'

Lujan v. Defenders of Wildlife, 112 S.Ct. 2130, 2136 (1992). We need not reach the question of whether plaintiffs could establish either of the other two prerequisites for standing, because the absence of any one element required dismissal. Snake River Farmers v. Department of Labor, 9 F.3d 792, 795 (9th Cir. 1993).

[3] Ms. Whitmore argues that under Buckley

v. Valeo, a congressional candidate has a personal stake in the FECA campaign finance system adequate for standing. But that depends on what claim is made. Buckley stated that "[i]n our view, the complaint in this case demonstrates that at least some of the appellants have a sufficient 'personal stake' in a determination of the constitutional validity of each of the challenged provisions . . . ." Buckley, 424 U.S. at 12 (emphasis added). That Ms. Whitmore had a stake in the congressional campaign finance laws does not imply that the law caused her injury. The law did not cause the out-of-state contributions which she claims made it harder for her to win.

[4] The harms alleged derive from the acts of other citizens, not from the Act. Plaintiffs have not established a causal relationship between the statute they challenge and the claimed injury, so they have not established standing to challenge the Act. See Allen v. Wright, 468 U.S. 737, 758 (1984);

Warth v. Seldin, 422 U.S. 490 (1975).

C. Frivolousness

In addition to a declaratory judgment that the Act was unconstitutional, plaintiffs sought an injunction commanding competing congressional candidates not to accept out-of-state contributions. Plaintiffs argue that their rights to free association, equal protection and a republican form of government entitle them to this relief. They seek a positive injunction enforcing these claimed rights, not just a declaratory judgment that the Act is unconstitutional. The claims are frivolous, so they were properly dismissed. See Goland v. United States, 903 F.2d 1247 (9th Cir. 1990). "A complaint is frivolous where none of the legal points are arguable on their merits." Id. at 1258.

[5] Plaintiffs have, of course, found no published precedent in any judicial decision for their novel propositions. "[C]hallenges to legislation based on the Guarantee Clause are

not justiciable." City of Rome v. United States, 446 U.S. 156, 182 n. 17 (1980); Nevada v. Watkins, 914 F.2d 1545, 1559 (9th Cir. 1990). Plaintiffs argue that the Constitution entitles them to representation by someone not beholden to any citizen of another state. They present a historian's affidavit that the Founding Fathers would have been "shocked" at out-of-state contributions to a congressional candidate. Though it can be argued that pure localism affords better representation, one could argue to the contrary that a Representative acts on matters affecting the interests of all Americans, so all Americans should have the right to express themselves on who ought to be a Representative. Neither the Constitution nor the United States Code affords plaintiffs any support for their political theory.

[6] The complaint prays for an injunction prohibiting competing congressional candidates from accepting out-of-state contributions.

Plaintiffs do not sue the out-of-state contributors who allegedly caused the injury they complain of. The district court could not, in any event, have granted the injunction sought because it would abridge people's constitutionally protected liberty to contribute to the candidates of their choice. Plaintiffs argue that the weight of in-state opinions should be enhanced, and that of out-of-state opinions reduced, by managing the flow of money.

[7] Such management of the system of political expression may violate the rights of the out-of-state contributors. "Neither the voting rights cases nor the fairness doctrine case support the position that the First Amendment permits Congress to abridge the rights of some persons to engage in political expression in order to enhance the relative voice of other segments of our society." Buckley, 424 U.S. at 49 n. 55. "[T]he concept that government may restrict the speech of some

elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment, which was designed 'to secure the widest possible dissemination of information from diverse and antagonistic sources,' and 'to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.'" Buckley, 424 U.S. at 48-49. Plaintiffs seek an unprecedented limitation on constitutionally protected freedom of political expression. Their claim is frivolous. No statute or precedent supports plaintiffs' claims.

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT

DISTRICT OF ALASKA

JONI WHITMORE and JAMES QUINLAN, on behalf of himself and all other persons similarly situated, Plaintiffs, v. FEDERAL ELECTION COMMISSION, DON YOUNG; TONY SMITH; FRANK VONDERSAAR, LAWRENCE FREIBERGER, ALASKANS FOR DON YOUNG; TONY SMITH FOR CONGRESS, ALASKANS FOR VONDERSAAR, and LAWRENCE J. FREIBERGER FOR CONGRESS, Defendants.	Case No. A94-289 CIV (JWS) ORDER FROM CHAMBERS

I. MOTION PENDING

This is an action to declare that the Federal Election Campaign Act of 1971, as amended (2 U.S.C. section 431 et seq.), violates Article I and the First and Fifth Amendments of the United States Constitution,

and to prohibit political candidates from accepting funds contributed by non-residents of Alaska. Defendants have moved to dismiss plaintiff's complaint, pursuant to Rule 12(b) and 12(b)(6), Federal Rules of Civil Procedure.[1] The motion has been briefed fully, and argument has been heard.

II. FACTS AND BACKGROUND

Plaintiffs allege that the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. section 431 et seq. ("Act" or "FECA"), violates Article I and the First and Fifth Amendments of the United States Constitution. Plaintiffs seek to prohibit political candidates from accepting and using funds contributed by individuals who are not

---

[1]Dockets 29 and 39. At oral argument, defendant Tony Smith and Tony Smith for Congress joined in this motion. Claims against Frank Vondersaar and Alaskans for Vondersaar were dismissed at Docket 7. Defendants Lawrence Freiberger and Lawrence J. Freiberger for Congress were dismissed at Docket 44.

residents of Alaska's at-large congressional election district ("non-Alaskans") and by political action committees that receive contributions from non-Alaskans. Plaintiffs filed a motion for preliminary injunction to stop her opponents from spending money from non-Alaskans and multi-candidate political committees. The court denied the motion on September 16, 1994.

Plaintiff Joni Whitmore ("Whitmore") was the candidate of the Green Party of Alaska in the November 8, 1994, general election for Alaska's representation in the United States House of Representatives. Plaintiff James Quinlan ("Quinlan") is a 25-year resident of Alaska, who routinely votes in Alaska congressional elections but has never made a campaign contribution to any candidate. The defendants are the Federal Election Commission ("Commission"), Don Young, Tony Smith, and "Alaskans for" Don Young and Tony Smith

("Young" and "Smith").

The Commission moves to dismiss the case on the grounds that the complaint does not allege facts indicating that plaintiffs have standing, and that claims I through IV of the complaint do not state claims for which relief can be granted against the Commission because the acts to which the claims object - i.e., the making of campaign contributions to Alaska congressional candidates by non-Alaskans - are not "authorized" by FECA. The Commission's main assertions are that the allegations in the complaint do not state injury in fact sufficient to create standing or a justiciable controversy in this court. Young joins the Commission in this motion, and additionally moves to dismiss Count V of the complaint, pursuant to Fed. R. Civ. P. 12(b)(6), on the ground that there is no state action to support plaintiffs' constitutional claim against Young.

III. DISCUSSION

A. FECA

Article I, section 4 provides Congress with the constitutional power to regulate federal elections. Congress has done so through the Federal Election campaign Act of 1971, as amended in 1974. Buckley v. Valeo, 424 U.S. 1, 13-14, 96 S.Ct. 612 (1976).[2] The

---

[2]Buckley v. Valeo, 424 U.S. 1, 96 S.Ct. 612 (1976) addresses arguments by various candidates for federal office and political parties and organizations challenging the constitutionality of the Act. The Supreme Court held that provisions limiting individual contributions to campaigns were constitutional, despite First Amendment objections; that provisions limiting expenditures by candidates on their own behalf violated the candidates' rights to freedom of speech; that various provisions limiting total expenditures in campaigns were invalid; that provisions limiting the amount which any individual could spend, independently of a candidate but relative to the candidate, impermissibly abridged freedom of speech; that the reporting requirements under the Act were valid; and the Federal Election Commission created by the Act, insofar as it had primary responsibility for conducting civil litigation and had rule-making eligibility for funds and federal elective office, was invalidly constituted in violation of the appointments clause.

purpose of the Act is to "limit the actuality and appearance of corruption resulting from large individual financial contributions" without unnecessary infringement of First Amendment rights. Id. at 26. FECA provides extensive rules concerning federal election campaigns. 2 U.S.C. sections 441a, 441b, and 441c provide limitations on contributions and expenditures and rules for contributions or expenditures by individuals, national banks, corporations, labor organizations, and government contractors.

The Commission argues that the Act limits the amount of money any individual or political committee may contribute to a candidate or her authorized campaign committee, without regard to the location or residency of the contributor, and that the Act does not "create" any rights. Citing 2 U.S.C. section 441a (prohibiting persons from contributing more than $ 1,000 to any election for Federal office

and prohibiting any political committee from contributing more than $ 5,000 per calendar year) and 441b(c) (prohibiting contributions by entities such as corporations, labor unions, or government contractors, whose participation in financing political campaigns presents a special risk of corruption).

Whitmore claims that the intent of the framers of the Constitution was that members of the House of Representatives should not only be elected exclusively by the voters of their district, but they should receive political support and assistance from citizens of their district only, so their actions in office cannot be influenced by citizens who are not their voting constituents. She asserts that with the 1974 Amendments to FECA, Congress intended to create the right of non-Alaskans to make campaign contributions to defendants Alaskans for Don Young and Tony Smith for Congress, and that this right was created in

violation of Article I and the First and Fifth Amendments of the United States Constitution. Plaintiffs also argue that FECA injures Quinlan, by depriving him of his right to equal protection and to be governed by a U.S. House of Representatives that is republican in form.

B. Standing

The party invoking federal jurisdiction bears the burden of establishing standing. Lujan v. Defenders of Wildlife, 112 S.Ct. 2130, 2136 (1992). The Commission argues that plaintiffs have failed to allege the constitutional requirements of standing, because the injury alleged is speculative. Whitmore responds that the complaint alleges facts demonstrating that plaintiffs have a personal stake in the outcome of the controversy.

Article III of the United States Constitution limits the court's subject matter jurisdiction to the adjudication of cases and

controversies; a nondiscretionary requirement that requires a person seeking to invoke the jurisdiction of the court to establish the requisite standing to litigate her claim. Whitmore v. Arkansas, 495 U.S. 149, 154, 110 S.Ct. 1717, 1722 (1990); Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 471 (1982). Plaintiff must show: (1) that she has suffered an "injury in fact" that is "concrete and particularized," not conjectural or hypothetical; (2) that there is a causal connection between the injury and the conduct complained of, making the injury fairly traceable to the challenged action of the defendant, and not the result of actions by some third party not before the court; and (3) that it is likely that the injury will be redressed by a favorable decision. Lujan, 112 S.Ct. 2130, 2136 (1992).

In addition to these constitutional

requirements, federal courts have established prudential principles that affect standing. Valley Forge Christian College, 454 U.S. 464 at 471. Courts will not adjudicate "abstract questions of wide public significance" that amount to "generalized grievances" shared by many and which are more appropriate for resolution by Congress. Warth v. Seldin, 422 U.S. 490, 499-500, 95 S.Ct. 2197 (1975).

1. Injury in Fact

The Commission argues that the complaint contains no concrete or particularized facts showing injury in fact resulting from the Act, because plaintiffs have not alleged facts demonstrating that the winning candidate will act on behalf of non-Alaskans, political committees, or national political parties to the detriment of Alaska residents. The Commission points out that the Act permits all candidates the same opportunity to seek contributions from the same sources, and

Whitmore's inability to purchase as much campaign advertising as her opponents derives solely from the greater amount, not the source, of her opponents' campaign funds.

Whitmore responds that defendants Alaskans for Don Young and Tony Smith for Congress intend to spend the money they receive as campaign contributions from non-Alaskans to communicate with registered voters who reside in Alaska's at-large congressional election district, and that these expenditures will interfere with her right to political association with the same registered voters. According to Whitmore, whether these contributions will preclude her from winning the election is a question of fact, for which she has presented the affidavit of Jean Craciun, "expert on the conduct of statewide election campaigns in Alaska."

For an injury to be particularized, it must affect the plaintiff in a personal and individual way. Lujan, 112 S.Ct. at 2137.

Recently, in a case similar to the one before this court, Virginia voters challenged the constitutionality of campaign contributions to Senate candidates by non-residents of their state. The court concluded that plaintiffs lacked standing to bring such action, there was no case or controversy, and that the issue must be left to the legislative branch. See Froelich v. Federal Elections Comm., 855 F. Supp. 868 (E.D. Va. 1994), appeal docket No. 94-1777 (4th Cir. 1994).

In Froelich, plaintiffs brought action against the Commission and candidates in the race for Senate, alleging that their constitutional rights under Article I, Article V, the Seventeenth Amendment, and the separation-of-powers doctrine of the United States Constitution were being violated because the candidate defendants for the U.S. Senate for the Commonwealth of Virginia solicited, accepted, and used contributions from

individuals who were not residents of Virginia and that such contributions had been authorized and regulated by FECA.

The court remarked that Article III requires plaintiffs to show that they have personally suffered "distinct and palpable injury," and plaintiffs' allegations of injury were devoid of any claim that plaintiffs themselves had suffered, or would suffer, injury-in-fact as a result of political contributions from non-Virginians. The court further stated that even if plaintiffs had alleged injury sufficient to satisfy Article III, that would not end the inquiry into whether they have standing to bring this action, because regulation of federal elections is committed to the legislature, not the judiciary, and courts should not interfere with a coordinate branch of government by making legislative policy. Id. (citing Baker v. Carr, 369 U.S. 186, 204, 82 S.Ct. 691 (1962)).

Whitmore argues that her case is distinguishable from Froelich, because she has alleged direct injury to herself, as a candidate, while the Froelich plaintiffs generally alleged that the citizens of Virginia may suffer from contributions of non-Virginians. Whitmore also contends that the allegations in the complaint explicitly link the harm campaign contributions made by nonresidents are inflicting in a particularized way to Quinlan, who alleges injury caused by a dilution of the value of his vote, due to contributions from non-residents.

Craciun's affidavit states in pertinent part that:

> Whitmore's communications with voters will be drowned out by defendants YOUNG and SMITH's communications with the same voters . . . [and if] the court does not prohibit defendants YOUNG and SMITH's committees from spending the money they obtain from nonresidents, in my professional judgment . . . plaintiff WHITMORE's candidacy for election as Alaska's representative in the United States House of Representatives is over before the general election has even begun.

(Docket 35; Craciun aff., paragraph 9). Craciun further declares that in her professional opinion, permitting the other candidates to accept non-Alaskan contributions will "inflict debilitating, and indeed fatal, harm" on Whitmore's candidacy for the same elective office, and a significant amount of the harm would be alleviated if they were prohibited from spending the money they obtain from persons who are not residents of Alaska (Craciun aff., paragraph 10, pp. 8-9).

Whitmore's alleged injury is hypothetical and speculative. Although she may have suffered injury, as described by Craciun, there is no evidence that if all candidates were prohibited from accepting contributions from non-Alaskans, the balance would favor Whitmore to the extent necessary to make a difference in the election. Furthermore, by failing to prohibit candidates from accepting non-resident contributions, the Act itself does not affect the ability of a candidate to campaign or to

seek contributions for that campaign from any individual. Nor does it affect Quinlan's ability to be governed by a U.S. House of Representatives that is republican in form; each candidate is offered the same opportunity to solicit and receive contributions. The court thus concludes that neither Whitmore nor Quinlan has established injury-in-fact sufficient to have standing to assert these claims.

2. Causation

The Commission argues that Whitmore's alleged injury would not be fairly traceable to the challenged action of defendants because: (1) Whitmore and her campaign committee voluntarily have refused and returned all contributions by persons who are not residents of the district, and Quinlan voluntarily decided not to make campaign contributions, any alleged disparity is not imposed by the Act and thus cannot confer standing on her to challenge its constitutionality; (2) no provision of the

Act "authorizes" non-residents to make contributions to Alaska candidates; and (3) Whitmore's alleged injury arises from the government's regulation (or lack of regulation) of a third party. The Commission argues that the non-resident contributions Whitmore alleges to be her injury are the result of independent decisions by private individuals and groups about the disposal of their own money, and thus, there is no state action. The Commission also asserts that even if state action did exist, the Act applies equally to all candidates and all contributors.

Distinguishing this case from those cited in Whitmore's brief, the Commission points out that there is a fundamental difference between the right to vote, which the state may not abridge, and the First Amendment rights of free speech and associations represented by campaign contributions. The principles underlying voting cases - "[c]ases invalidating governmentally-imposed wealth restrictions on

the right to vote or file as a candidate for public office" - do not apply to campaign finance regulations. Citing Buckley, 424 U.S. at 49 n. 55.

Whitmore responds that Congress' intent in drafting the Act, and then amending it in 1974, was to provide a comprehensive measure for complete control over campaign contributions and expenditures in campaigns for Federal elective office, and that the measure is unconstitutional.

Judges "cannot iron out electoral disparity resulting from differences in candidates' financial resources." Kaplan v. County of Los Angeles, 894 F.2d 1076, 1082 (9th Cir. 1990), cert. denied, 496 U.S. 907 (1990)(California statute requiring that candidates pay pro rata share of costs of publication of election statements in voter's pamphlets put out by local government agencies in connection with elections for nonpartisan city or county offices does not violate First

and Fourteenth Amendment rights). Whitmore has not established that the disparity in contributions is due to the Act's permitting non-Alaskans to make contributions to Alaska candidates, affecting her in a particularized way. Furthermore, in situations where the "asserted injury arises from the government's allegedly unlawful regulation (or lack of regulation) of someone else," although standing is not precluded, "it is ordinarily 'substantially more difficult' to establish." Lujan, 112 S.Ct. at 2137 (emphasis in original) (quoting Allen v. Wright, 468 U.S. 737, 758, 104 S.Ct. 3315, reh'g denied, 468 U.S. 1250, 105 S.Ct. 51 (1984). The injury must be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party.'" Id., 112 S.Ct. at 2136 (quoting Simon v. Eastern Kentucky Welfare Rights Org., 426 U.S. 26, 41-42 (1976)). Whitmore alleges no facts indicating that the government action has

either caused non-Alaskans to contribute to her opponents, prevented her from soliciting such contributions, or prevented non-Alaskans from contributing to her. Therefore, there is no evidence that the Act treats plaintiffs in a different or unequal fashion from other American citizens.

3. Redressing the Injury

The Commission argues that plaintiffs fail to allege any facts to demonstrate that its alleged injury is likely to be "redressed by a favorable decision," Lujan, 112 S.Ct. at 2137, because declaring the Act unconstitutional would not stop political contributions across state lines, but would instead permit even larger contributions from individuals, political committees, and corporations outside Alaska. As the Commission points out, to accomplish the result plaintiffs seek, the court would have to add to FECA a prohibition of non-resident contributions, which it is not permitted to do. Whitmore responds that she is

not requesting the court to invalidate those portions of the Act which the Commission suggests that campaign contributors will no longer be required to comply, and that with respect to Young and Smith, enjoining them from accepting campaign contributions from non-Alaskans would redress the injury alleged.

There is no evidence that prohibiting Young and Smith from accepting non-Alaskan contributions would redress plaintiffs' injury, because the effect of these contributions is wholly speculative. Therefore, plaintiffs have not carried their burden to establish standing. It is, therefore, unnecessary to address defendants' other arguments.

IV. CONCLUSION

Neither plaintiff has standing to bring this claim against defendants, because they have not demonstrated injury-in-fact or causation, or that the relief they seek would redress the alleged injury. It may be added that regulation of federal elections is more

appropriately committed to the legislature, not to the judiciary. Kaplan, 894 F.2d at 1082. Because plaintiffs lack standing, the motions at Dockets 29 and 39 are GRANTED. Plaintiffs' claims are dismissed, and the clerk is instructed to prepare an appropriate judgment.

DATED this 8 day of December 1994 at Anchorage, Alaska.

JOHN W. SEDWICK
UNITED STATES DISTRICT JUDGE

APPENDIX C

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

JONI WHITMORE, and JAMES QUINLAN, on behalf of himself and all other persons similarly situated,	)	
Plaintiffs,	)	No. A94-289 CV (JWS)
vs.	)	
THE FEDERAL ELECTION COMMISSION, DON YOUNG, TONY SMITH, FRANK VONDERSAAR, LAWRENCE FREIBERGER, ALASKANS FOR DON YOUNG, TONY SMITH FOR CONGRESS, ALASKANS FOR VONDERSAAR, and LAWRENCE J. FREIBERGER FOR CONGRESS,	)	
Defendants.	)	

COMPLAINT

COME NOW the plaintiffs and allege:

INTRODUCTION

1. This is a civil action seeking injunctive and declaratory relief that - to the extent the Federal Election Campaign Act, as

amended, 2 USC 431 et seq., authorizes a person who is not a resident of Alaska's at-large congressional election district to make a contribution (either individually or through a multicandidate political committee) to a candidate seeking election as Alaska's representative in the United States House of Representatives - such Act violates Article I and the First and Fifth Amendments of the United States Constitution.

JURISDICTION

2. This court has jurisdiction of this action pursuant to 2 USC 437h, 28 USC 1331, and 42 USC 1983. Venue is proper pursuant to 28 USC 1391(b) and (e).

PLAINTIFFS

3. Plaintiff JONI WHITMORE is an eight year resident of the State of Alaska, who presently resides and is domiciled northeast of Homer, Alaska. Plaintiff WHITMORE is registered to vote in Alaska and has voted in

primary and general elections in Alaska since 1988, and intends to vote in the August 23, 1994 primary and November 8, 1994 general elections. Plaintiff WHITMORE is eligible to vote in any election for the Office of President of the United States. Plaintiff WHITMORE is a member of the Green Party of Alaska (hereinafter "Green Party"), which has been recognized by the State of Alaska pursuant to AS 15.60.010(20) as a "political party" whose candidates will appear on the August 23, 1994 primary election and November 8, 1994 general election ballots. At its 1994 state convention, the Green Party gave plaintiff WHITMORE its full endorsement as a party candidate for election as Alaska's representative in the United States House of Representatives during the 104th Congress. Plaintiff WHITMORE has properly filed as a candidate for that elective office with the State of Alaska Division of Elections and

plaintiff WHITMORE's name will appear on both the August 23, 1994 primary election ballot as the unopposed candidate for the Green Party's nomination as Alaska's representative in the United States House of Representatives and on the November 8, 1994 general election ballot as the Green Party's candidate for that office. Plaintiff WHITMORE will be directly, personally, immediately and irreparably injured by the unlawful acts of the defendants complained of herein in that defendant principal campaign committees ALASKANS FOR DON YOUNG, TONY SMITH FOR CONGRESS, ALASKANS FOR VONDERSAAR, and LAWRENCE J. FREIBERGER FOR CONGRESS' expenditure of monies prior to the November 8, 1994 general election that the committees derive from contributions made to them or to defendants DON YOUNG, TONY SMITH, FRANK VONDERSAAR, and LAWRENCE FREIBERGER by persons who are not residents of Alaska's at-large congressional election district for the

express purpose of influencing who registered voters who reside in the district elect as Alaska's representative in the United States House of Representatives will preclude any possibility of candidate WHITMORE winning election to that office. The unlawful acts of the defendants complained of herein will allow campaign contributors who are not residents of Alaska's at-large congressional election district to substantially and purposefully interfere with, disrupt, and unlawfully infringe upon, plaintiff WHITMORE's exercise of her right to political association with registered voters who reside in the district. Such unlawful acts also will deprive plaintiff WHITMORE of her right to the equal protection of the laws and of her right to be governed by a United States House of Representatives that is republican in form in that if one of the defendant candidates is elected at the November 8, 1994 general election to serve as Alaska's

representative in the United States House of Representatives he will not have been exclusively dependent for his election on registered voters who reside in Alaska's at-large congressional election district, nor will he be exclusively answerable to such voters for his legislative acts during the 104th Congress.

4. Plaintiff JAMES QUINLAN is a twenty-five year resident of the State of Alaska who presently resides and is domiciled in Homer, Alaska. Plaintiff QUINLAN is registered to vote in Alaska and has voted in primary and general elections in Alaska since 1972, and intends to vote in the August 23, 1994 primary and November 8, 1994 general elections. Plaintiff QUINLAN is eligible to vote in any election for the Office of President of the United States. Both prior to the August 23, 1994 primary and the November 8, 1994 general elections, as well as prior to all previous elections for Alaska's representative in the

United States House of Representatives in which he has voted, plaintiff QUINLAN has not made a campaign contribution of any kind or amount to any candidate, or to the principal campaign or other authorized committee of any candidate, seeking election to that office. Rather, plaintiff QUINLAN's exercise of his right to political association with other registered voters who reside in Alaska's at-large congressional election district, and his influence over the legislative acts of successful candidates, has been, and continues to be, limited exclusively to casting and withholding his vote. Plaintiff QUINLAN will be directly, personally, immediately and irreparably injured by the unlawful acts of the defendants complained of herein in that defendant principal campaign committees ALASKANS FOR DON YOUNG, TONY SMITH FOR CONGRESS, ALASKANS FOR VONDERSAAR, and LAWRENCE J. FREIBERGER FOR CONGRESS' expenditure of

monies prior to the November 8, 1994 general election that the committees derive from contributions made to them by persons who are not residents of Alaska's at-large congressional election district for the express purpose of influencing who registered voters who reside in the district elect to serve as Alaska's representative in the United States House of Representatives will substantially and purposefully interfere with, disrupt, and unlawfully infringe upon, plaintiff QUINLAN's exercise of his right to political association with other registered voters who reside in the district. The unlawful acts of the defendants complained of herein also will deprive plaintiff QUINLAN of his right to the equal protection of the laws and of his right to be governed by a United States House of Representatives that is republican in form in that the candidate elected at the November 8, 1994 general election to serve as Alaska's

representative in the United States House of Representatives will not have been exclusively dependent for his election on plaintiff QUINLAN and other registered voters who reside in Alaska's at-large congressional election district, nor will he be exclusively answerable to such voters for his legislative acts during the 104th Congress.

CLASS ACTION

5. Plaintiff JAMES QUINLAN brings this action on his own behalf and on behalf of a class composed of all registered voters who reside in Alaska's at-large congressional election district who intend to vote in the November 8, 1994 general election for a candidate seeking election as Alaska's representative in the United States House of Representatives, and who do not make a campaign contribution of any kind or amount to any candidate, or to the principal campaign or other authorized committee of any candidate,

seeking election to that office, and whose influence over the legislative acts of the successful candidate will be limited exclusively to having cast or withheld his or her vote for or from the candidate at the November 8, 1994 election and his or her threat to cast or withhold his or her vote for or from the candidate at the November 1996 election.

6. As of the date of filing of this action, 323,313 Alaska residents have registered to vote, and, of that number, approximately 250,000 registered voters likely will cast ballots at the November 8, 1994 general election for candidates seeking election as Alaska's representative in the United States House of Representatives during the 104th Congress. Of that number, as of March 31, 1994, no more than 1,000 residents of Alaska's at-large congressional election district have made a campaign contribution of any kind or in any amount to any candidate, or

to the principal campaign or other authorized committee of any candidate, seeking election as Alaska's representative in the United States House of Representatives. As a consequence, approximately 249,000 Alaska residents are members of the class described in paragraph no. 6. For that reason, the members of the class are so numerous that joinder of all members is impracticable.

7. There are questions of law and fact common to the members of the class.

8. The claims of plaintiff JAMES QUINLAN described herein are typical of the claims of the members of the class.

9. Plaintiff JAMES QUINLAN will fairly and adequately protect the interests of other members of the class.

10. The defendants have acted, and between now and the November 8, 1994 general election intend to continue to act, in a manner and on grounds generally applicable to the

class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

DEFENDANTS

11. Defendant FEDERAL ELECTION COMMISSION is the federal agency established by Congress to administer and enforce the provisions of the Federal Election Campaign Act, as amended, complained of herein.

12. Defendant DON YOUNG is a resident of the State of Alaska who was elected on November 3, 1992 as Alaska's representative in the United States House of Representatives during the 103rd Congress. Defendant YOUNG was first elected to that office in 1973, and has served as Alaska's representative in the United States House of Representatives for the previous twenty-one years. Defendant YOUNG, a member of the Republican Party, has properly filed as a candidate in the August 23, 1994 Republican primary election for his party's nomination as

its candidate in the November 8, 1994 general election for election as Alaska's representative in the United States House of Representatives during the 104th Congress. Because defendant YOUNG is not opposed in the August 23, 1994 Republican primary election, his name will appear on the November 8, 1994 general election ballot as the Republican Party's candidate for election as Alaska's representative in the United States House of Representatives. Throughout 1993 and 1994 defendant YOUNG has solicited and accepted, and intends to continue to solicit and accept, and his principal campaign committee has expended, and intends to continue to expend, campaign contributions made by persons who are not residents of Alaska's at-large congressional election district (such contributions having been made to defendant YOUNG and his committee by such persons both individually and through multicandidate political committees).

13. Defendant TONY SMITH is a resident of the State of Alaska and a member of the Democratic Party who has properly filed as a candidate in the August 23, 1994 Democratic primary election for his party's nomination as its candidate in the November 8, 1994 general election for election as Alaska's representative in the United States House of Representatives during the 104th Congress. Throughout 1993 and 1994 defendant SMITH has solicited and accepted, and intends to continue to solicit and accept, and his principal campaign committee has expended, and intends to continue to expend, campaign contributions made by persons who are not residents of Alaska's at-large congressional election district (such contributions having been made to defendant SMITH and his committee by such persons both individually and through multicandidate political committees). .

14. Defendant FRANK VONDERSAAR is a resident of the State of Alaska and a member of the Democratic Party who has properly filed as a candidate in the August 23, 1994 Democratic primary election for his party's nomination as its candidate in the November 8, 1994 general election for election as Alaska's representative in the United States House of Representatives during the 104th Congress. On information and belief, throughout 1993 and 1994 defendant VONDERSAAR has solicited and accepted, and intends to continue to solicit and accept, and his principal campaign committee has expended, and intends to continue to expend, campaign contributions made by persons who are not residents of Alaska's at-large congressional election district. 15. Defendant LAWRENCE FREIBERGER is a resident of the State of Alaska and a member of the Democratic Party who has properly filed as a candidate in the August 23, 1994 Democratic primary election for his party's nomination as

its candidate in the November 8, 1994 general election for election as Alaska's representative in the United States House of Representatives during the 104th Congress. On information and belief, throughout 1993 and 1994 defendant FREIBERGER has solicited and accepted, and intends to continue to solicit and accept, and his principal campaign committee has expended, and intends to continue to expend, campaign contributions made by persons who are not residents of Alaska's at-large congressional election district.

16. Defendant ALASKANS FOR DON YOUNG is the political committee that defendant DON YOUNG has designated pursuant to 2 USC 432(e) as his "principal campaign committee," which is authorized to accept campaign contributions (including contributions made by persons who are not residents of Alaska's at-large congressional election district) and expend money obtained from such contributions for campaign expenses incurred in

support of defendant YOUNG's election in the November 8, 1994 general election as Alaska's representative in the United States House of Representatives during the 104th Congress.

17. Defendant TONY SMITH FOR CONGRESS is the political committee that defendant TONY SMITH has designated pursuant to 2 USC 432(e) as his "principal campaign committee," which is authorized to accept campaign contributions (including contributions made by persons who are not residents of Alaska's at-large congressional election district) and expend money obtained from such contributions for campaign expenses incurred in support of defendant SMITH's election in the November 8, 1994 general election as Alaska's representative in the United States House of Representatives during the 104th Congress.

18. Defendant ALASKANS FOR VONDERSAAR is the political committee that defendant FRANK VONDERSAAR has designated pursuant to 2 USC 432(e) as his "principal campaign committee,"

which is authorized to accept campaign contributions (including contributions made by persons who are not residents of Alaska's at-large congressional election district) and expend money obtained from such contributions for campaign expenses incurred in support of defendant VONDERSAAR's election in the November 8, 1994 general election as Alaska's representative in the United States House of Representatives during the 104th Congress.

19. Defendant LAWRENCE J. FREIBERGER FOR CONGRESS is the political committee that defendant LAWRENCE FREIBERGER has designated pursuant to 2 USC 432(e) as his "principal campaign committee," which is authorized to accept campaign contributions (including contributions made by persons who are not residents of Alaska's at-large congressional election district) and expend money obtained from such contributions for campaign expenses incurred in support of defendant FREIBERGER's election in the November 8, 1994 general

election as Alaska's representative in the United States House of Representatives during the 104th Congress.

STATEMENT OF FACTS

Republican Form of Government

20. The government of the United States of America that the delegates to the Constitutional Convention of 1787 intended the United States Constitution to create is not a democracy - it is a republic. The delegates did not intend the 230 million persons who presently are citizens who reside within the geographical boundaries of the United States to individually make decisions for the legislative branch of the United States government. Rather, they intended legislative decisions to be made by the citizens' representatives - the 100 citizens who serve in the United States Senate and the 435 citizens who serve in the United States House of Representatives.

21. The republican form of government the delegates to the Constitutional Convention of

1787 intended the United States Constitution to create requires each member of the United States House of Representatives to represent the interests of, and to be accountable for their legislative acts to, an equal and discrete number of United States residents. For that reason, after each decennial national census congressional election districts are reapportioned in order to ensure that the same number of residents reside in each congressional election district.

22. The delegates to the Constitutional Convention of 1787 intended the republican form of government that they intended the United States Constitution to create to accomplish an important, and indeed, elemental societal objective: to prevent "factions" from unduly influencing the legislative acts of members of the United States House of Representatives to a faction's pecuniary or policy advantage and to the detriment of the public good. Since voters who were members of particular factions would

be distributed through congressional election districts (or congregated in only a few districts) their casting and withholding of their votes for particular candidates could not be concentrated to allow them to unduly influence the legislative acts of members of the entire United States House of Representatives acting collectively. However, as described below, the republican form of government's control over the influence of factions has been eroded to the point of disappearance by the system for financing congressional election campaigns authorized by the Federal Election Campaign Act, as amended, and complained of herein.

23. Although the decennial reapportionment of congressional election districts assures that every resident of every district has the same mathematical opportunity to influence the election of, and the legislative acts performed by, the resident of his or her district who is elected to represent

the interests of all of the residents of the district in the United States House of Representatives, the system for financing congressional election campaigns authorized by the Federal Election Campaign Act, as amended, and complained of herein, denies each citizen of the United States, including, but not limited to, plaintiff JAMES QUINLAN, the same opportunity to influence the election of, and the legislative acts performed by, his or her district's representative in the United States House of Representatives because, as a consequence of such system, successful candidates for election to the United States House of Representatives are as dependent upon the support of, and are as accountable for their legislative acts to, campaign contributors who are not residents of the congressional election districts from which they have been elected, as they are to registered voters who reside in their districts.

The Cost of Waging a Successful Campaign for Election to the United States House of Representatives

24. To win election to the United States House of Representatives a candidate must be able to communicate information about him or herself and about his or her positions on public issues to registered voters who reside in the candidate's congressional election district to enable such voters to decide whether to cast their ballots for or against such candidate. In 1787 when the United States Constitution was drafted, and for the century hence, candidate-voter communication was conducted by candidates and their surrogates speaking personally with voters and by the publication of information about the candidate and his views on issues in newspapers and periodicals.

25. By the first decades of the twentieth century advances in communication technologies began radically reordering candidate-voter communication. In addition to the traditional

means of communication, candidates today communicate with voters through radio and television advertisements, computer-generated direct mail and other nontraditional means. The new campaign communications share the common attributes of costing money and of being insatiable in their applications. Since no amount of candidate-voter communication is too much such communication, however much money a candidate has available to spend on voter communication is the amount the candidate will, and indeed must, spend.

26. The technological advances in candidate-voter communication technologies, the cost to utilize such technologies, and "no amount of candidate-voter communication during an election is too much communication" insatiability have combined to dramatically increase the cost of congressional campaigns. During the 1974 election, the principal campaign and other authorized committees of candidates who were elected to the United

States House of Representatives spent, on average, slightly more than $ 50,000. During the 1990 election, the committees of winning candidates spent, on average, $ 407,000.

27. The cost of winning election as Alaska's representative in the United States House of Representatives has increased faster than the national average. During the 1990 election, defendant DON YOUNG's principal campaign committee spent $ 521,120 to enable defendant YOUNG to win the election and thereby retain his seat as Alaska's representative in the United States House of Representatives. Of that amount, defendant YOUNG's committee spent $ 164,035 communicating with voters of Alaska's at-large congressional election district through radio and television advertisements, $ 34,704 communicating with voters through computer-generated direct mail, $ 7,003 communicating with voters and other individuals by telephone, spent $ 46,910 to purchase airplane tickets and other transportation means

to enable defendant YOUNG to communicate with voters face-to-face, and spent an additional $ 16,041 to purchase or lease computer and other office equipment necessary needed to facilitate the above-listed communications.

The Federal Election Campaign Act

28. The Federal Election Campaign Act, as amended, regulates the terms and conditions pursuant to which persons may make campaign contributions to candidates seeking election to the United States House of Representatives. The Act authorizes persons of whom, as a matter of policy, Congress approves, to make contributions of which, as a matter of policy, Congress approves, while imposing criminal penalties on persons who make contributions of which, as a matter of policy, Congress disapproves, 2 USC 437g(d).

29. The Act prohibits persons who are foreign nationals, 2 USC 441e, or corporations, 2 USC 441b, from making any contribution to any candidate for election to the United States

House of Representatives. Congress also has prohibited persons who are employees of defendant FEDERAL ELECTION COMMISSION from making contributions to candidates for election to the United States House of Representatives, 5 USC 7323(b)(1). And Congress has prohibited persons who are employees of sitting members of the United States House of Representatives from making contributions to candidates who are their employers, 18 USC 603.

30. With respect to persons who the Federal Election Campaign Act, as amended, authorizes to make contributions to candidates seeking election to the United States House of Representatives, the Act authorizes each person to give each candidate up to $ 1,000 per primary, general and run-off election, 2 USC 441a(1)(A). The Act also authorizes persons to organize multicandidate political committees, 2 USC 432 and 433, and authorizes any person eligible to make a contribution to contribute up to $ 5,000 per year to a multicandidate

committee, 2 USC 441a(1)(C). The multicandidate committee, in turn, is authorized to contribute up to $ 5,000 per year to any candidate seeking election to the United States House of Representatives, 2 USC 441a(2).

31. The congressional election campaign finance system described in paragraph no. 30 authorizes persons to make campaign contributions to candidates, and to the principal campaign and other authorized committees of candidates, seeking election to the United States House of Representatives in election districts in which the persons who make the contributions do not reside and are not registered to vote. As a consequence, persons who are not residents of Alaska's at-large congressional election district have given, and prior to the November 8, 1994 general election intend to continue to give, campaign contributions to defendants DON YOUNG, TONY SMITH, FRANK VONDERSAAR, LAWRENCE

FREIBERGER, ALASKANS FOR DON YOUNG, TONY SMITH FOR CONGRESS, ALASKANS FOR VONDERSAAR, and LAWRENCE J. FREIBERGER FOR CONGRESS, both by making individual contributions to the defendants and by making contributions to multicandidate political committees that the committees commingle and then pass through to the defendants as contributions from such committees. All of the contributions made by persons who are not residents of Alaska's at-large congressional election district described in this paragraph are authorized by the Federal Election Campaign Act, as amended.

32. Persons who are not residents of Alaska's at-large congressional election district and who during 1993 and 1994 have made contributions to defendants DON YOUNG, TONY SMITH, FRANK VONDERSAAR, LAWRENCE FREIBERGER, ALASKANS FOR DON YOUNG, TONY SMITH FOR CONGRESS, ALASKANS FOR VONDERSAAR, and LAWRENCE J. FREIBERGER FOR CONGRESS, or who prior to the November 8, 1994 election intend to make

contributions to the defendants, have not made, and do not intend to make, such contributions with philanthropic motive. Rather, such persons have made, or intend to the make, such contributions for one, and not infrequently for both, of the following motives:

A. To have the money used by the defendant candidate or principal campaign committee to whom it is given to pay for additional candidate-voter communication in order to increase the likelihood that a majority of the registered voters who vote in the November 8, 1994 general election will know of and vote for the defendant candidate to whom the contribution has been made;

B. To incur the literal and/or psychological debt of the defendant candidate to whom the contribution is made so that, if the candidate is elected at the November 8, 1994 general election as Alaska's representative in the United States House of Representatives during the 104th Congress, the

person who has made the contribution will have influence over the candidate's legislative acts that he or she would not have had if he or she had not given the candidate a contribution. In both cases, the vast majority of persons who are not residents of Alaska's at-large congressional election district who make such contributions do so because they want the defendant candidate to whom they make the contribution to be elected, and, once elected, to perform legislative acts that will benefit the contributors' pecuniary or policy interests.

The November 8, 1994 Election

33. In February 1994 plaintiff JONI WHITMORE, by letter, contacted defendants DON YOUNG, TONY SMITH, FRANK VONDERSAAR, and LAWRENCE FREIBERGER, pointed out to each defendant that his acceptance of campaign contributions from persons who are not residents of Alaska's at-large congressional

election district was both unfair and unlawful, and asked each defendant to neither accept nor expend money contributed to their campaigns - either individually or through multicandidate political committees - by persons who are not residents of the district. Each defendant refused to do so. As a consequence, as of March 31, 1994, defendant DON YOUNG and defendant ALASKANS FOR DON YOUNG have accepted $ 324,312 in contributions from persons who are not residents of Alaska's at-large congressional election district, both in individual and multicandidate political committee contributions. And defendant TONY SMITH and defendant TONY SMITH FOR CONGRESS have accepted $ 97,525 in contributions from such persons. By contrast, plaintiff WHITMORE and her principal campaign committee, ALASKANS FOR WHITMORE, have accepted $ 5,366 in contributions from persons who are residents of Alaska's at-large congressional election

district and have refused and returned all contributions that have been made to plaintiff WHITMORE and her committee by persons who are not residents of the district.

34. Between the date of filing of this action and the November 8, 1994 general election, defendant candidates and principal campaign committees will continue to accept individual and multicandidate political committee campaign contributions made by persons who are not residents of Alaska's at-large congressional election district.

IRREPARABLE HARM

35. Unless enjoined by this court, between the date of filing of this action and the November 8, 1994 general election, defendant candidates and principal campaign committees will expend the monies they receive in contributions described in paragraph nos. 33 and 34 for radio and television commercials, computer-generated mailings and other purposes

intended to increase their ability to communicate with registered voters who reside in Alaska's at-large congressional election district in order to urge such voters to exercise their rights to vote and to political association by voting in the general election for the defendant candidates who have made the expenditures.

36. The expenditures described in paragraph no. 35 of monies derived from contributions described in paragraph nos. 33 and 34 will substantially and purposefully interfere with, disrupt, and unlawfully infringe upon and drown out plaintiff JONI WHITMORE's communication with registered voters who reside in Alaska's at-large congressional election district, and, in so doing, interfere with, disrupt, and unlawfully infringe upon plaintiff WHITMORE's exercise of her right to political association with registered voters who reside in Alaska's at-large congressional

election district for the purpose of persuading such voters to support of her candidacy for election as Alaska's representative in the United States House of Representatives during the 104th Congress.

37. The expenditures described in paragraph no. 35 of monies of derived from contributions described in paragraph nos. 33 and 34 will allow persons who are not residents of Alaska's at-large congressional election district (acting through the communications that the defendant candidates and principal campaign committees purchase with money obtained from such nonresidents) to substantially and purposefully interfere with, disrupt, and unlawfully infringe upon plaintiff JAMES QUINLAN's exercise of his right to political association with other registered voters who reside in Alaska's at-large political election district for the purpose of selecting one of their number to represent the

interests of the residents of such district in the United States House of Representatives during the 104th Congress.

38. If, as a result of making the expenditures described in paragraph no. 35 of monies derived from contributions described in paragraph nos. 33 and 34, one of the defendant candidates is elected in the November 8, 1994 general election to serve as Alaska's representative in the United States House of Representatives during the 104th Congress, that result will substantially and purposefully interfere with, disrupt, and unlawfully infringe upon plaintiffs JONI WHITMORE and JAMES QUINLAN's right to be governed by a United States House of Representatives that is republican in form in that -

A. The election of such candidate will not have been decided exclusively by registered voters who are residents of Alaska's at-large congressional election district;

B. The elected candidate will not have been exclusively dependent upon registered voters who are residents of Alaska's at-large congressional election district for his election;

C. Throughout the 104th Congress the legislative acts of the elected candidate will be subject to undue influence from persons, and by lobbyists who represent such persons, who are not residents of Alaska's at-large congressional election district but who contributed to the candidate's election campaign;

D. If he intends to be a candidate in the November 1996 general election as Alaska's representative in the United States House of Representatives during the 105th Congress, the elected candidate will not be exclusively accountable for his legislative acts during the 104th Congress to residents of Alaska's at-large congressional election district, but will

also be accountable to persons who are not residents of the district but who contributed to the candidate's 1994 election campaign and who, if pleased with the candidate's legislative acts during the 104th Congress, can be expected by the candidate to contribute to his 1996 election campaign.

39. The plaintiffs have no adequate remedy at law to prevent the interferences, disruptions, and unlawful infringements described in paragraph nos. 35-38.

FIRST CLAIM FOR RELIEF

40. The plaintiffs incorporate paragraph nos. 1 through 39 by reference.

41. The First Amendment of the United States Constitution guarantees plaintiffs JONI WHITMORE and JAMES QUINLAN a right to political association with other registered voters who reside in Alaska's at-large congressional election district for the purpose of electing one of their number to represent such voters

and other residents of the district in the United States House of Representatives during the 104th Congress.

42. The Federal Election Campaign Act, as amended, authorizes defendant candidates and principal campaign committees to accept and expend monies contributed, pursuant to the Act, by persons who are not residents of Alaska's at-large congressional election district.

43. The authorizations in the Federal Election Campaign Act, as amended, and the acts of the defendants described in paragraph no. 43 substantially and purposefully interfere with, disrupt, and unlawfully infringe upon plaintiffs WHITMORE and QUINLAN's exercise of their right to political association described in paragraph no. 41.

44. The interference with, disruption of and infringement upon plaintiffs WHITMORE and QUINLAN's exercise of their right to political association described in paragraph no. 41 are

not justified because necessary to advance any compelling governmental interest.

SECOND CLAIM FOR RELIEF

45. The plaintiffs incorporate paragraph nos. 1 through 39 by reference.

46. Article I and the First and Fifth Amendments of the United States Constitution guarantee plaintiffs JONI WHITMORE and JAMES QUINLAN a right to be governed by a United States House of Representatives that is republican in form.

47. The republican form described in paragraph no. 46 embodies a system for the election of Alaska's representative in the United States House of Representatives that ensures that the person elected is exclusively dependent for his or her election and reelection on registered voters who reside in Alaska's at-large congressional election district, and is exclusively accountable to such voters for his or her legislative acts.

48. The Federal Election Campaign Act, as amended, authorizes defendant candidates and principal campaign committees to accept and expend monies contributed, pursuant to the Act, by persons who are not residents of Alaska's at-large congressional election district.

49. The authorizations in the Federal Election Campaign Act, as amended, and the acts of the defendants described in paragraph no. 48 substantially and purposefully interfere with, disrupt, and unlawfully infringe upon the republican form of the United States House of Representatives under which Article I and the First and Fifth Amendments of the United States Constitution entitle plaintiffs WHITMORE and QUINLAN to be governed.

50. The interference with, disruption of, and infringement upon the republican form of government under which plaintiffs WHITMORE and QUINLAN are entitled to be governed are not justified because necessary to advance any compelling governmental interest.

THIRD CLAIM FOR RELIEF

51. The plaintiffs incorporate paragraph nos. 1 through 39 by reference.

52. The right of plaintiff JAMES QUINLAN to vote for persons seeking election as Alaska's representative in the United States House of Representatives is a fundamental right, and any infringement upon plaintiff QUINLAN's exercise of that right must be strictly scrutinized.

53. The right to vote described in paragraph no. 52 embodies more than the simple right to suffrage. It also embodies the right of plaintiff JAMES QUINLAN to have an ability to influence the legislative acts of members of the United States House of Representatives that is equal to, and the same as, the influence that every other registered voter in the United States has over the legislative acts of members of the United States House of Representatives.

54. The Fifth Amendment of the United States Constitution guarantees plaintiff JAMES

QUINLAN the equal protection of the laws.

55. The provisions of the Federal Election Campaign Act, as amended, complained of herein divide persons whose interests are represented by members of the United States House of Representatives into the following classes:

Class No. 1

Persons who are registered to vote and who influence the legislative acts of members of the United States House of Representatives exclusively by casting their vote for or against candidates seeking election to represent the interests of residents of the congressional election district in which they reside.

Class No. 2

Persons who are registered to vote and who influence the legislative acts of members of the United States House of Representatives by casting their vote for or against candidates seeking election to represent the interests of

residents of the congressional election district in which they reside, and who also influence the legislative acts of members of the United States House of Representatives elected in districts in which they do not reside by making or withholding campaign contributions to or from such members.

56. Plaintiff JAMES QUINLAN is a member of class no. 1 described in paragraph no. 55.

57. The Federal Election Campaign Act's division of persons into the two classes described in paragraph no. 55 discriminates against persons who are members of class no. 1 to the advantage of persons who are members of class no. 2.

58. The discrimination described in paragraph no. 57 substantially and purposefully interferes with, disrupts, and unlawfully infringes upon the members of class no. 1's right to vote in that it debases and dilutes the weight of each class member's vote to the same extent that his or her vote would be

debased and diluted if such class member were compelled to exercise his or her right to vote for candidates who represent residents of malapportioned congressional election districts.

59. The infringement upon plaintiff JAMES QUINLAN's exercise of his right to vote, and the unequal protection of the laws that authorize such infringement, are not justified because necessary to advance any compelling governmental interest.

FOURTH CLAIM FOR RELIEF

60. The plaintiffs incorporate paragraph nos. 1 through 39 by reference.

61. The right of plaintiff JONI WHITMORE to associate as a candidate for election as Alaska's representative in the United States House of Representatives with registered voters who are residents of Alaska's at-large congressional election district for the purpose of advancing her election to such office is a fundamental right, and any infringement upon

plaintiff WHITMORE's exercise of that right must be strictly scrutinized.

62. The Fifth Amendment of the United States Constitution guarantees plaintiff JONI WHITMORE the equal protection of the laws.

63. The provisions of the Federal Election Campaign Act complained of herein divide persons who are candidates for election to the United States House of Representatives into the following classes:

Class No. 1

Candidates to whom, because of their lack of incumbency or otherwise, persons who are not residents of the candidates' congressional election districts do not make campaign contributions.

Class No. 2

Candidates to whom, because of their incumbency or otherwise, persons who are not residents of the candidates' congressional election districts make campaign contributions.

64. Plaintiff JONI WHITMORE is a member

of class no. 1 described in paragraph no. 63.

65. The Federal Election Campaign Act's division of persons who are candidates for election to the United States House of Representatives into the two classes described in paragraph no. 63 discriminates against persons who are members of class no. 1 to the advantage of persons who are members of class no. 2.

66. The discrimination described in paragraph no. 65 substantially and purposefully interferes with, disrupts, and unlawfully infringes upon the right of members of class no. 1 to associate politically with registered voters who are residents of the congressional election districts in which they reside and are seeking election in that their ability to communicate with such residents is debased and diluted by communications to such residents from competing candidates who are members of class no. 2 who finance their communications with monies obtained from contributions made by

persons who are not residents of their congressional election districts.

67. The infringement upon plaintiff JONI WHITMORE's exercise of her right to associate as a candidate with other registered voters who are residents of Alaska's at-large congressional election district, and the unequal protection of the laws that authorize such infringement, are not justified because necessary to advance any compelling governmental interest.

FIFTH CLAIM FOR RELIEF

68. The plaintiffs incorporate paragraph nos. 1 through 67 by reference.

69. Article I, section 4, of the United States Constitution authorizes the State of Alaska to conduct, and otherwise regulate, the election of Alaska's representative in the United States House of Representatives in which plaintiff JONI WHITMORE and defendants DON YOUNG, TONY SMITH, FRANK VONDERSAAR, and LAWRENCE FREIBERGER are candidates.

70. As candidates in an election conducted and otherwise regulated by the State of Alaska, defendants DON YOUNG, TONY SMITH, FRANK VONDERSAAR, and LAWRENCE FREIBERGER's acceptance, and defendants ALASKANS FOR DON YOUNG, TONY SMITH FOR CONGRESS, ALASKANS FOR VONDERSAAR, and LAWRENCE J. FREIBERGER FOR CONGRESS' expenditure, of monies obtained as campaign contributions made by persons who are not residents of Alaska's at-large congressional election district are actions taken under the color of the laws, customs and usages of the State of Alaska.

71. The actions of the defendants described in paragraph no. 70 deprive the plaintiffs of rights secured by Article I and the First and Fifth Amendments of the United States Constitution.

PRAYER

WHEREFORE the plaintiffs respectfully request that this court:

1. Certify this action as a class action;

2. Certify the following questions to the United States Court of Appeals for the Ninth Circuit:

A. To the extent the Federal Election Campaign Act, as amended, authorizes candidates seeking election as Alaska's representative in the United States House of Representatives to solicit and accept campaign contributions from persons who are not residents of Alaska's at-large congressional election district, and to finance campaign-related communications with registered voters who reside in such district with monies derived from such contributions, does such Act substantially infringe up plaintiffs JONI WHITMORE and JAMES QUINLAN's exercise of their right to vote, their right to political association, and their right to be governed by a United States House of Representatives that is republican in form?

B. If the answer to question no. A is yes, is the infringement upon plaintiffs' exercise of their rights to vote, to political

association and to be governed by a United States House of Representatives that is republican in form justified because necessary to advance a compelling governmental interest?

3. Enter a declaratory judgment that to the extent the Federal Election Campaign Act, as amended, authorizes candidates seeking election as Alaska's representative in the United States House of Representatives, and their principal campaign and other authorized committees, to solicit and accept campaign contributions made (either individually or through a multicandidate political committee) by persons who are not residents of Alaska's at-large congressional election district, and to finance campaign-related communications with registered voters who reside in such district with monies derived from such contributions, the Act violates Article I and the First and Fifth Amendments of the United States Constitution.

4. Enter a permanent injunction prohibiting defendants DON YOUNG, TONY SMITH, FRANK VONDERSAAR, LAWRENCE FREIBERGER, ALASKANS FOR DON YOUNG, TONY SMITH FOR CONGRESS, ALASKANS FOR VONDERSAAR, and LAWRENCE J. FREIBERGER FOR CONGRESS from soliciting or accepting campaign contributions made (either individually or through a multicandidate political committee) by persons who are not residents of Alaska's at-large congressional election district.

5. Award the plaintiffs their costs and a reasonable attorney's fee; and

6. Award the plaintiffs such other relief as the court may deem just.

DATED: June 30, 1994

/s/ Donald Craig Mitchell

Donald Craig Mitchell

Attorney for Plaintiffs

APPENDIX D

FEDERAL ELECTION CAMPAIGN ACT

2 U.S.C. 431 et seq.

Section 441a. Limitations on contributions and expenditures

(a) Dollar limits on contributions. (1) No person shall make contributions -

(A) to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $ 1,000;

(B) to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate, in any calendar year which, in the aggregate, exceed $ 20,000; or

(C) to any other political committee in any calendar year which, in the aggregate, exceed $ 5,000.

(2) No multicandidate political committee shall make contributions -

(A) to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $ 5,000;

(B) to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate, in any calendar year, which, in the aggregate, exceed $ 15,000; or

(C) to any other political committee in any calendar year which, in the aggregate, exceed $ 5,000.

(3) No individual shall make contributions aggregating more than $ 25,000 in any calendar year. For purposes of this paragraph, any contribution made to a candidate in a year other than the calendar year in which the election is held with respect to which such contribution is made, is considered to be made during the calendar year in which such election is held.

Section 441b. Contributions or expenditures by national banks, corporations, or labor organizations

(a) It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization, to make a contribution or expenditure in connection with any election at which presidential and vice-presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to, Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person knowingly to accept or receive any contribution prohibited by this section, or any

officer or any director of any corporation or any national bank or any officer of any labor organization to consent to any contribution or expenditure by the corporation, national bank, or labor organization, as the case may be, prohibited by this section.

Section 441c. Contributions by government contractors

(a) Prohibition. It shall be unlawful for any person -

(1) who enters into any contract with the United States or any department or agency thereof either for the rendition of personal services or furnishing any material, supplies, or equipment to the United States or any department or agency thereof or for selling any land or building to the United States or any department or agency thereof, if payment for the performance of such contract or payment for such material, supplies, equipment, land, or building is to be made in whole or in part from funds

appropriated by the Congress, at any time between the commencement of negotiations for and the later of (A) the completion of performance under; or (B) the termination of negotiations for, such contract or furnishing of material, supplies, equipment, land, or buildings, directly or indirectly to make any contribution of money or other things of value, or to promise expressly or impliedly to make any such contribution to any political party, committee, or candidate for public office or to any person for any political purpose or use; or

(2) knowingly to solicit any such contribution from any such person for any such purpose during any such period.

Section 441f. Prohibition of contributions in name of another

No person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution

made by one person in the name of another person.

Section 441g. Limitation on contribution of currency

No person shall make contributions of currency of the United States or currency of any foreign country to or for the benefit of any candidate which, in the aggregate, exceed $ 100, with respect to any campaign of such candidate for nomination for election, or for election, to Federal office.

Supreme Court, U.S.
FILED
MAR 6 1996
CLERK

(2)

NO. 95-1195

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1995

CHERYL M. PELOQUIN,

Petitioner,

vs.

UNITED OF OMAHA LIFE INSURANCE COMPANY, a Nebraska corporation,

Respondent.

APPEAL FROM A JUDGMENT OF THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA, IN THE DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

PETITIONER'S REPLY TO BRIEF IN OPPOSITION

LAWRENCE D. BACHE
Fla. Bar No. 0557935
LAW OFFICE OF LAWRENCE D. BACHE
Attorney for Petitioner
Fountains Executive Centre
9000 West Sheridan Street
Suite 174
Pembroke Pines, Florida 33024
(954) 436-7376

8 pp

I. CONCERNING RESPONDENT'S ARGUMENT THAT THE DISTRICT COURT OF APPEAL WAS NOT "THE HIGHEST COURT" OF FLORIDA "IN WHICH A DECISION COULD BE HAD"

Respondent's contention that the Petitioner did not exhaust her state appellate remedies because there was a mechanism in place permitting application for review in the Florida Supreme Court is misconceived and without merit. Since codification of the rules respecting application to the Florida Supreme Court for certiorari, the Court's power to grant certiorari has been limited. In Robinson v. State, 132 So.2d 3 (Fla. 1961) the Court stated:

> [T]his Court no longer has extensive power to issue so called "common law writs of certiorari" to review judgments of lower courts. This power is now vested in District Courts of Appeal and Circuit Courts, by Article V, Sections 5 and 6, Florida Constitution. In situations in which review of a judgment or decree of a lower court is not otherwise provided for, the District Courts of Appeal are endowed with powers of review

limited to a determination of whether the judgment constitutes a deviation from the essential requirements of law. In a general way, this is the type of so-called common-law certiorari power exercised by this Court prior to the effective date of amended Article V, on July 1, 1957.

II. CONCERNING MISREPRESENTATIONS OF FACT CONTAINED IN RESPONDENT'S BRIEF IN OPPOSITION

1. Respondent's severally repeated assertion, made without citation to the record, that the Petitioner requested the trial court to apply a de novo standard of review is false, misleading, and without basis. As stated at page 5-6 of the Petition, the issue of the standard of review to be applied in the trial court was not directly raised or addressed by either party in the trial court proceedings.

2. Respondent's oft repeated assertion that the trial court applied a de novo standard of review is misconceived and illogically speculative. The court's

holding that there was no proper basis for the administrator's denial of benefits implicated application of an arbitrary and capricious standard of review. A decision without proper basis is necessarily arbitrary and capriciously rendered. At all events, the presumption of correctness mandates a holding that the proper standard of review was applied by the trial court.

3. Respondent's statement that the Petitioner was receiving medical care for the condition of endometriosis at the time the insurance contract was issued constitutes a distortion of the facts. Firstly, the record discloses that the parties stipulated that any diagnostic test and/or medicine taken (the so called "treatment") prior to the effective date of the policy was for abdominal pain, and not endometriosis. (T. October 28, 1993, page 7, line

23-25) R.218-220). Secondly, as the trial court found, abdominal pain could not, without more, be equated with endometriosis. Most importantly, the evidence which the Respondent alleges:

> ...demonstrated that PELOQUIN's condition was present at all relevant times and was the cause for which she was receiving ongoing treatment and diagnosis at the time she had submitted an application to UNITED for coverage (Brief in Opposition, page 5, second paragraph).

was evidence which was acquired after the final denial of benefits and which neither the trial court nor the appellate court could properly have factored into the calculus of their respective decisions, not being evidence which the plan administrator had before him/her at the time of making the denial.[1]

---

[1] Review of a Plan Administrator's denial is limited to the evidence which the Plan Administrator had before him at the time the decision was made. Jett v. Blue Cross & Blue Shield of Alabama, 890

III. CONCERNING RESPONDENT'S STATEMENT THAT "THE STANDARD OF REVIEW IS IRRELEVANT TO THE ACTUAL DETERMINATION"

1. It cannot properly be contended that the standard of review to be applied was a matter of no consequence in the trial court. The standard of review is always relevant in reviewing an Administrator's denial of benefits.

2. In the case sub judicia the standard of review required by law to be applied was the arbitrary and capricious standard. Firestone Tire and Rubber Co. v. Bruch, 489 U.S. 101, 109 S.Ct. 948, 103, L.Ed.2d 80 (1989). As stated in II (2) above, the trial judges's arguments in support of his findings indicated that he applied the 'arbitrary and capricious'

F.2d 1137(11th Cir. 1990).

standard of review. [2] At all events, in accordance with the presumption of correctness, it must be so presumed. Based upon the findings of fact which the trial Judge made, and the standard of review which he presumably (and apparently) applied, the reviewing court could properly have reversed his decision only if there was an abuse of discretion. Determination of the standard of review applied by the trial court was therefore a necessary step in the review proceedings in the court of

[2] The judge stated:

> Look, you applied for an insurance policy, filled in your application. You put that you had headaches, you take aspirin for them, and then two years later they find a brain tumor ... why would [the insurance company] not be in a position to say, "wait a second. He had those headaches ... before we wrote this policy ... and now he wants us to pay off because he got a tumor in his brain. He should have known. He had headaches. (Record Vol. 4, Transcript of Proceedings taken on December 2, 1993, page 23)

appeal. Arguendo, had the trial judge mistakenly applied a de novo standard of review, then having regard to the findings of fact which he made, his decision must necessarily and inevitably have been the same, that is, that the Plan Administrator's denial of benefits was wrong.

Respectfully submitted,

LAWRENCE D. BACHE
Florida Bar No. 0557935

LAW OFFICE OF LAWRENCE D. BACHE
Attorney for the Petitioner
Fountains Executive Centre
9000 West Sheridan Street
Suite 174
Pembroke Pines, Florida 33024
(954) 436-7376

ROY TAYLOR
Florida Bar No. 403229
Attorney for the Petitioner
155 S. Miami Ave.
Penthouse No. 1
Miami, FL 33131
(305) 358-8813

FILED
MAR 25 1996
CLERK

No. 95-1195

In the Supreme Court of the United States

OCTOBER TERM, 1995

JONI WHITMORE, ET AL., PETITIONERS

v.

FEDERAL ELECTION COMMISSION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

DREW S. DAYS, III
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 514-2217

LAWRENCE M. NOBLE
General Counsel
RICHARD B. BADER
Associate General Counsel
VIVIEN CLAIR
Attorney
Federal Election Commission
Washington, D.C. 20463

16 pp

QUESTION PRESENTED

Whether petitioners have standing to challenge the constitutionality of the Federal Election Campaign Act of 1971, 2 U.S.C. 431 *et seq.*, on the ground that it does not prohibit contributions to congressional candidates from citizens outside the candidates' congressional district.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statement	2
Argument	9
Conclusion	12

TABLE OF AUTHORITIES

Cases:

Albanese v. *FEC*, No. 95-6099, 1996 WL 115382 (2d Cir. Mar. 12, 1996)	10, 11
Allen v. *Wright*, 468 U.S. 737 (1984)	9
Buckley v. *Valeo*, 424 U.S. 1 (1976)	2, 12
California Medical Ass'n v. *FEC*, 641 F.2d 619 (9th Cir. 1980), aff'd, 453 U.S. 182 (1981)	8, 11
Demarest v. *Manspeaker*, 498 U.S. 184 (1991)	11
Estate of Cowart v. *Nicklos Drilling Co.*, 505 U.S. 469 (1992)	11
Flagg Bros. v. *Brooks*, 436 U.S. 149 (1978)	10
Froelich v. *FEC*, 855 F. Supp. 868 (E.D. Va. 1994), aff'd, 57 F.3d 1066 (4th Cir. 1995)	10
Linda R.S. v. *Richard D.*, 410 U.S. 614 (1973)	9
Lujan v. *Defenders of Wildlife*, 504 U.S. 555 (1992)	7, 9, 10
Pennsylvania Dep't of Public Welfare v. *Davenport*, 495 U.S. 552 (1990)	11
Simon v. *Eastern Kentucky Welfare Rights Org.*, 426 U.S. 26 (1976)	10
United States v. *Hays*, 115 S. Ct. 2431 (1995)	9

Constitution and statutes:

U.S. Const.:	
Art. I	4, 10
Art. II, § 2, Cl. 2 (Appointments Clause)	2
Art. III	7, 8, 9
Art. V	10

Statutes—Continued: Page

Amend. I 2, 4, 5
Amend. V 4
Amend. XVII 10
Federal Election Campaign Act Amendments of 1976, Pub. L. No. 94-283, § 101(a), 90 Stat. 475 ..... 3, 12
Federal Election Campaign Act of 1971, 2 U.S.C. 431 *et seq.* 2
2 U.S.C. 437c(b)(1) 3
2 U.S.C. 437d(a) 3
2 U.S.C. 437d(e) 3
2 U.S.C. 437f 3
2 U.S.C. 437g 3
2 U.S.C. 437g(a)(1) 3
2 U.S.C. 437g(a)(2) 3
2 U.S.C. 437h 3, 7, 8
2 U.S.C. 441a 2
2 U.S.C. 441a(a) 3
2 U.S.C. 441b(a) 3
2 U.S.C. 441c(a) 3
2 U.S.C. 441e 3
2 U.S.C. 441f 3
2 U.S.C. 441g 3
28 U.S.C. 1331 6

Miscellaneous:

S. Rep. No. 689, 93d Cong., 2d Sess. (1974) 11

In the Supreme Court of the United States

OCTOBER TERM, 1995

No. 95-1195

JONI WHITMORE, ET AL., PETITIONERS

v.

FEDERAL ELECTION COMMISSION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

OPINIONS BELOW

The October 26, 1995, opinion of the court of appeals, as amended per the court's January 10, 1996, order (Pet. App. 1-18), is reported at 68 F.3d 1212. The opinion of the district court (Pet. App. 19-40) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on October 26, 1995. The petition for a writ of certiorari was filed on January 23, 1996. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Congress enacted the Federal Election Campaign Act (FECA) of 1971, 2 U.S.C. 431 *et seq.*, primarily in order to "limit the actuality and appearance of corruption resulting from large individual financial contributions." *Buckley* v. *Valeo*, 424 U.S. 1, 26 (1976). Congress achieved that goal chiefly by limiting the amount of money that any individual or political committee may contribute to a candidate for federal office or to a political committee. 2 U.S.C. 441a. That limitation "focuses precisely on the problem of large campaign contributions—the narrow aspect of political association where the actuality and potential for corruption have been identified—while leaving persons free * * * to assist to a limited but nonetheless substantial extent in supporting candidates and committees with financial resources." *Buckley* v. *Valeo*, 424 U.S. at 28. This Court has held that the FECA's specific limitations on the size of campaign contributions serve the compelling governmental purpose of preventing the "actuality and appearance of corruption" without unnecessary infringement of First Amendment rights. 424 U.S. at 26.[1]

---

[1] The Court in *Buckley* also upheld the FECA's reporting requirements. 424 U.S. at 66-68. The Court struck down provisions of the FECA that limited expenditures by candidates from their own personal funds, limited total expenditures by candidates on their campaigns, and limited the amount of independent expenditures. The Court also found the FEC's composition to violate the Appointments Clause with regard to the Commission's exercise of enforcement and rulemaking powers. In 1976, Congress amended the FECA to remedy the constitutional infirmities identified in the *Buckley* decision.

As relevant here, the FECA (1) places dollar limitations on the size of contributions by individuals and multicandidate political committees to candidates for federal office and their political committees, 2 U.S.C. 441a(a); (2) prohibits congressional campaign contributions by national banks, corporations, and labor organizations, 2 U.S.C. 441b(a); (3) prohibits political contributions by certain government contractors, 2 U.S.C. 441c(a); (4) prohibits contributions by foreign nationals, 2 U.S.C. 441e; (5) prohibits a person from making a contribution in the name of another, 2 U.S.C. 441f; and (6) limits the size of contributions made in cash, 2 U.S.C. 441g. The FECA neither requires candidates and their committees to accept, nor prohibits them from accepting, contributions from persons residing outside the district from which a candidate seeks election.

Respondent Federal Election Commission (FEC or Commission) is an independent federal agency charged with the administration, interpretation, and civil enforcement of the FECA. See 2 U.S.C. 437c(b)(1), 437d(a) and (e), 437f, and 437g. Congress has authorized the FEC to "formulate policy" under the Act, 2 U.S.C. 437c(b)(1), to institute investigations of possible violations of the Act, 2 U.S.C. 437g(a)(1) and (2), to initiate civil actions in the federal courts to obtain judicial enforcement of the Act, 2 U.S.C. 437c(b)(1) and 437d(e), and to initiate actions in the federal courts to determine the constitutionality of any provision of the Act, 2 U.S.C. 437h.

2. Petitioner Joni Whitmore was the Green Party's candidate in the 1994 congressional election

---

See Federal Election Campaign Act Amendments of 1976, Pub. L. No. 94-283, § 101(a), 90 Stat. 475.

for Alaska's single seat in the United States House of Representatives. Pet. App. 6. In her campaign for office, Whitmore chose not to solicit or accept contributions from contributors residing outside of Alaska's congressional district. *Id.* at 72-73. Petitioner James Quinlan is an Alaska resident and a registered voter. *Id.* at 7. On June 30, 1994, petitioners filed this action against the FEC and the Republican and Democratic Party candidates for Alaska's congressional district, along with those candidates' principal campaign committees (collectively, the candidate respondents). *Id.* at 41-92. In their complaint, petitioners alleged that unspecified provisions of the FECA violate Article I and the First and Fifth Amendments to the Constitution by "authorizing" non-Alaskans, either individually or through multicandidate political committees, to make campaign contributions to candidates for Alaska's seat in the House of Representatives. Pet App. 41-42, 69.

Whitmore alleged that the "campaign finance system" (Pet App. 68) established by the Act injured her, as a candidate for Alaska's congressional seat, because her opponents' expenditure of contributions from non-Alaskans to finance communications with Alaska's voters would "preclude any possibility of [her] winning election" (*id.* at 45) and would "drown out" her communications with Alaska's voters. *Id.* at 74. She further alleged that the Act violated her Fifth Amendment right to equal protection by discriminating between two "classes" of candidates—those who receive contributions from non-Alaskans and those who do not. Pet App. 86.

Both Whitmore and Quinlan alleged that the Act injured them as residents of, and registered voters in,

Alaska's congressional district. They alleged that the expenditure by the candidate respondents of contributions from non-Alaskans infringed petitioners' First Amendment right of political association with other Alaska voters (Pet. App. 78-80), and deprived them of their right to a House of Representatives that is "republican in form." *Id.* at 81.[2]

Quinlan alleged in addition that his right to vote for Alaska's representative "embodies the right * * * to have an ability to influence the legislative acts of members of the United States House of Representatives that is equal to, and the same as, the influence [of] every other registered voter in the United States." Pet. App. 82. He asserted that the FECA violates this purported right by discriminating in favor of voters who influence members of the House by both voting in their own congressional districts and making or withholding campaign contributions to candidates in other congressional districts. *Id.* at 82-85.[3]

In their complaint, petitioners sought a declaratory judgment:

---

[2] The complaint describes a House of Representatives that is "republican in form" as one in which the person elected as Alaska's representative "is exclusively dependent for his or her election and reelection on registered voters who reside in Alaska[] * * * and is exclusively accountable to such voters for his or her legislative acts." Pet. App. 80.

[3] Quinlan purported to assert this claim on his own behalf and on behalf of all registered voters in Alaska who do not make campaign contributions. Pet. App. 49-51. The district court did not certify the case as a class action, and petitioners did not challenge that determination on appeal. *Id.* at 8. The complaint also includes a fifth claim (*id.* at 88-89), directed solely toward the candidate respondents. We do not address that claim.

> [T]hat to the extent the [FECA] authorizes candidates seeking election as Alaska's representative in the United States House of Representatives, and their principal campaign and other authorized committees, to solicit and accept campaign contributions made * * * by persons who are not residents of Alaska's at-large congressional election district, and to finance campaign-related communications with registered voters who reside in such district with monies derived from such contributions, the Act violates Article I and the First and Fifth Amendments of the United States Constitution.

Pet. App. 91. They also sought a permanent injunction prohibiting the candidate respondents from soliciting or accepting campaign contributions from persons who are not residents of Alaska's at-large congressional election district. *Id.* at 92.

Petitioners invoked the district court's jurisdiction under both 28 U.S.C. 1331 and 2 U.S.C. 437h—a provision of the FECA that permits certification of questions regarding the constitutionality of provisions of the FECA to the court of appeals, Pet. App. 42, "which shall hear the matter sitting en banc."[4]

---

[4] Section 437h provides:

> The Commission, the national committee of any political party, or any individual eligible to vote in any election for the office of President may institute such actions in the appropriate district court of the United States, including actions for declaratory judgment, as may be appropriate to construe the constitutionality of any provision of this Act. The district court immediately shall certify all questions of constitutionality of this Act to the United States court of appeals for the

2 U.S.C. 437h. Pursuant to Section 437h, petitioners requested that the district court certify their constitutional claims to the en banc court of appeals. Pet App. 90.

3. The district court refused to certify petitioners' proffered constitutional questions to the court of appeals, and on December 8, 1994, the court dismissed the complaint for lack of standing.[5] Pet. App. 19-40. The court held that petitioners had failed to allege facts demonstrating the Article III requirements of injury in fact, causation, and redressability, as required by this Court's standing cases. Pet. App. 26 (citing *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992)).

The court found petitioners' alleged injury to be inadequate to satisfy Article III because, among other things, "the [FECA] itself does not affect the ability of a candidate to campaign or to seek contributions for that campaign from any individual." Pet. App. 33-34. Similarly, petitioners failed to show that their alleged injuries were "fairly traceable to the challenged action of the defendant, and not the result of some third party" (*id.* at 37, quoting *Lujan*, 504 U.S. at 560), because the complaint "alleges no facts indicating that * * * government action has either caused non-Alaskans to contribute to [Whitmore's] opponents, prevented her from soliciting such contri-

---

circuit involved, which shall hear the matter sitting en banc.

2 U.S.C. 437h.

[5] The court had earlier dismissed petitioners' claims against two unsuccessful primary candidates and those candidates' political committees, and had denied petitioners' motion for a preliminary injunction. See Pet. App. 21.

butions, or prevented non-Alaskans from contributing to her." Pet App. 37-38. Finally, the court held that the redressability requirement was not met because declaring the FECA unconstitutional would not stop out-of-state political contributions, and "because the effect of [such] contributions is wholly speculative." *Id.* at 39.

4. The court of appeals affirmed. The court held that a district court's failure to certify constitutional questions under Section 437h of the FECA is not error where a plaintiff lacks standing or raises frivolous claims. Pet. App. 10 (citing *California Medical Ass'n* v. *FEC*, 453 U.S. 182, 193 n.14 (1981)). Here, petitioners' case suffered from both defects. Pet. App. 11, 14, 18.

Observing that "[t]he Act neither prohibits nor authorizes out-of-state campaign contributions" (Pet. App. 12), and that "[t]he harms alleged [by petitioners] derive from the acts of other citizens, not from the Act" (*id.* at 14), the court concluded that "[t]he absence of a causal relationship between the Act, which [petitioners] challenge, and their injury, necessarily deprives them of standing to challenge the Act." *Id.* at 12-13.[6]

The court also held that petitioners' claims were legally frivolous. Pet. App. 15. Noting that petitioners cited no published judicial authority in support of their legal theory (*ibid.*), and that the relief petitioners sought—enjoining the acceptance of donations from out-of-state contributors who are not parties to the litigation—might abridge the rights of

---

[6] Because the court held that petitioners had failed to satisfy the causation requirement, it did not address the other criteria for standing under Article III. Pet. App. 13.

third parties (*id.* at 17), the court found petitioners' claims to be untenable.

ARGUMENT

1. In order to establish standing, a plaintiff must show (1) an "injury in fact" that is "concrete and particularized," not "conjectural" or "hypothetical"; (2) that there is a "causal connection between the injury and the conduct complained of"; and (3) that it is "likely," as opposed to "merely speculative," that the injury will be "redressed by a favorable decision." *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992) (internal quotations marks and citations omitted). See also *United States* v. *Hays*, 115 S. Ct. 2431, 2435 (1995); *Allen* v. *Wright*, 468 U.S. 737, 751 (1984). The court below correctly held that petitioners could not demonstrate causation under Article III.

Assuming, *arguendo*, that petitioners satisfied the injury-in-fact requirement by alleging that out-of-state contributions diminished Whitmore's ability to compete against the candidate respondents, petitioners have failed to allege that any provision of the FECA caused that result. See *Linda R.S.* v. *Richard D.*, 410 U.S. 614, 618 (1973).[7] Rather, it is evident from the face of the complaint (see, *e.g.*, Pet. App. 71-73) that the alleged electoral disadvantage to petitioners sprang from the private decisions of non-Alaskans to support the candidate respondents, and from petitioner Whitmore's decision not to seek or accept such

[7] Petitioners fail to identify any particular provision of the FECA that they contend violates the Constitution. Instead, they rely on the conclusory allegation that "the operation of the FECA campaign finance system violates the petitioners' exercise of [First and Fifth Amendment] rights." Pet. 10; see also *id.* at 16.

support. Accordingly, petitioners have not alleged facts showing that their purported injury is "fairly traceable to the challenged action of the defendant, and not the result of some third party." *Lujan*, 504 U.S. at 560-561 (quoting *Simon* v. *Eastern Kentucky Welfare Rights Org.*, 426 U.S. 26, 41-42 (1976)).

Petitioners contend (Pet. 17-18) that, because the FECA regulates the amount and form of certain campaign contributions (whether from intradistrict or extradistrict sources), it affirmatively authorizes contributions by donors residing outside of a candidate's district. As the court of appeals observed (Pet. App. 12), however, that contention rests on the incorrect premise that a statute necessarily authorizes or requires all private action that it does not affirmatively prohibit. See *Flagg Bros.* v. *Brooks*, 436 U.S. 149, 164-165 (1978) (private conduct does not become unconstitutional governmental action "by the simple device of characterizing the [government's] inaction as 'authorization' or 'encouragement.'"). The FECA neither requires candidates to accept, nor prohibits them from accepting, out-of-state contributions. See *Albanese* v. *FEC*, No. 95-6099, 1996 WL 115382 (2d Cir. Mar. 12, 1996), slip op. 2188.[8] Nor would such

---

[8] In *Albanese*, the court followed the decision below in rejecting on standing grounds a constitutional challenge to the FECA. The court in *Albanese* concluded that, because the "FECA does not require that contributions be made to any candidate * * *, any injury claimed by these plaintiffs is not attributable to [the] FECA." Slip op. 2188. See also *Froelich* v. *FEC*, 855 F. Supp. 868 (E.D. Va. 1994) (dismissing for lack of standing complaint that challenged out-of-state campaign contributions under Article I, Article V, the Seventeenth Amendment, and the Separation of Powers doctrine), aff'd, 57 F.3d 1066 (4th Cir. 1995).

contributions be prohibited in the absence of the FECA. *Id.* at 2-3; see also *California Medical Ass'n* v. *FEC*, 641 F.2d 619, 623 n.2 (9th Cir. 1980) (en banc) (contributions by individuals to political committees were not limited before passage of the FECA), aff'd, 453 U.S. 182 (1981). The court below thus concluded (Pet. App. 14) that "[t]he harms alleged [by petitioners] derive from the acts of other citizens, not from the Act."

Petitioners also complain (Pet. 24-25) that "[t]he methodology the Court of Appeals employed to discern the intent of Congress embodied in [the] FECA so far departed from the accepted and usual course of judicial proceedings that this Court's review [is warranted]." The court below, however, looked directly to the text of the FECA (see, *e.g.*, Pet. App. 11-12), which clearly does not regulate the location within the United States from which a campaign contribution may be made. "[W]hen a statute speaks with clarity to an issue judicial inquiry into the statute's meaning, in all but the most extraordinary circumstances, is finished." *Estate of Cowart* v. *Nicklos Drilling Co.*, 505 U.S. 469, 475 (1992); see also *Demarest* v. *Manspeaker*, 498 U.S. 184, 187 (1991); *Pennsylvania Dep't of Public Welfare* v. *Davenport*, 495 U.S. 552, 557-558 (1990). Petitioners identify no "extraordinary circumstances" that would justify a departure from established rules of statutory construction in this case.[9]

---

[9] Petitioners rely primarily (Pet. 24) on a 1974 legislative report, S. Rep. No. 689, 93d Cong., 2d Sess. 1, to argue that Congress intended the FECA completely to control campaign contributions and expenditures. Congress, however, did not adopt the provisions for public financing of congressional elections that were proposed by that report. The report's

2. Petitioners contend that review should be granted because the court of appeals "gratuitous[ly] pronounce[d]" their claims to be frivolous and thereby rendered a forbidden "advisory opinion[]." Pet. 25. The question whether petitioners' constitutional claims are frivolous was, however, properly before the court of appeals, see Gov't C.A. Br. 2, 31-34, and the court's decision to address that question in the alternative does not warrant this Court's review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

DREW S. DAYS, III
Solicitor General

LAWRENCE M. NOBLE
General Counsel
RICHARD B. BADER
Associate General Counsel
VIVIEN CLAIR
Attorney
Federal Election Commission

MARCH 1996

---

proposed limit on campaign expenditures, which Congress did enact, was invalidated by this Court in *Buckley* v. *Valeo*, 424 U.S. at 54-58, and deleted from the Act by Congress in 1976. See Federal Election Campaign Act Amendments of 1976, Pub. L. No. 94-283, § 101(a), 90 Stat. 475.